

REGISTRO DE CONTRATOS

TOMO 19 PAGINA 60

CONTRATO NUM. 2010-000 325

SUBAGREEMENT  
BETWEEN  
UNIVERSITY OF PUERTO RICO  
MAYAGÜEZ CAMPUS  
AND  
PUERTO RICO STATE EMERGENCY MANAGEMENT AGENCY

**SUBAGREEMENT NUMBER 2009-2010-004**

ARTICLE I-PARTIES

UNIVERSITY OF PUERTO RICO, MAYAGUEZ CAMPUS (UPRM), a higher education institution which is a governmental instrumentality of the Commonwealth of Puerto Rico represented by Dr. Jorge Rivera Santos, Interim Chancellor of the University of Puerto Rico in Mayagüez and Dr. José Colucci, Director of the Research and Development Center.-----

PUERTO RICO STATE EMERGENCY MANAGEMENT AGENCY (PRSEMA), a hazard and mitigation agency which is a governmental instrumentality of the Commonwealth of Puerto Rico represented by Heriberto N. Saurí, MPH, Director of the Puerto Rico State Emergency Management Agency in Puerto Rico.-----

This constitutes a Subcontract for the transfer of work under the approved project granted by the National Oceanic & Atmospheric Administration (NOAA) entitled "Puerto Rico Component of the NTHMP and Tsunami Ready Program". (Grant number NA09NWS4670012). -----

Both parties recognize that they are legally bound by this Subagreement and expressly agree to the terms and conditions expressed hereafter. -----

ARTICLE II-STATEMENT OF WORK

The Puerto Rico State Emergency Management Agency agrees to undertake activities in accordance with the Statement of Work appended as **ATTACHMENT A.** -----

The activities there described may not be subcontracted or assigned to third parties unless written authorization by UPRM is granted. -----

ARTICLE III-PERSONNEL


The activities to be performed under this Subagreement will be under the direction and supervision of Dr. Víctor A. Huérfano Moreno, Principal Investigator. If Dr. Huérfano Moreno ceases to serve as PI for any reason, PRSEMA will promptly notify UPRM and Dr. Jorge Rivera Santos and UPRM shall use good faith efforts to identify a mutually acceptable replacement. -----

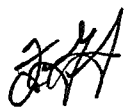
ARTICLE IV-PERIOD OF PERFORMANCE

This Subagreement shall be effective from the date of its signature and until **July 31, 2010**. -----

ARTICLE V- FUNDING AND ALLOWABLE COSTS

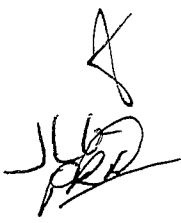
UPRM will reimburse PRSEMA for the work done under the terms of this Subagreement up to a total amount of **\$50,000.00**, to be paid from the account number **535018**. This Amount will cover all the work performed by PRSEMA under the terms contained in the Subagreement. Office expense, communications, trips and transportation in Puerto Rico are the responsibility of PRSEMA. Additional funds may be obligated only by formal written modification and upon funds received by UPRM from the sponsor NOAA. -----

 Subrecipient can use the subaward money only for charges that are allowed under the applicable federal cost principles. -----

 Transfer of funds and changes in the scope or objective of the project requires both parties UPRM and PRSEMA previous written approval. -----


ARTICLE VI- PAYMENT


A. Payments for performance under this Subagreement shall be issued by UPRM to PRSEMA on cost reimbursable basis within 60 days of receipt of **proper approved invoice(s)** at UPRM's R&D Center Accounts Payable Division. PRSEMA. -----

 B. To be considered **proper** the invoice must be dated and contain the Subagreement identification number 2009-2010-004, details of the expenses PRSEMA is invoicing (i.e: salaries and fringe benefits) and an original signature of an authorized representative of PRSEMA that certifies that the expenses reflected in the invoice(s) are actual expenditures consistent with the terms and conditions of this Subagreement. -----

C. To be considered **approved**, an invoice must contain the dated approval initial or signature of UPRM representative or his designee. -----



D. The total amount authorized for expenditure under this subagreement is that stated in Article V. This amount shall not be exceeded unless this subagreement is amended to add additional funds. The UPRM will not pay any amount in excess of the stated amount. -----

 G. Final invoices must be received within 60 days of the termination of this subcontract. Invoices that exceed either period of performance or the obligated amount of this Subagreement may be considered improper invoices, and may be returned to PRSEMA unpaid. Acceptance and payment by UPRM of any improper invoices shall not be considered as a waiver of UPRM right to return future improper invoices. -----

 H. If, by any reason, this Subagreement is terminated; only invoices for work performed to the date of such termination will be considered proper and paid correspondingly, subject to Article XV of this Subagreement. -----

I. Failure of the subrecipient to comply with the terms set forth in this subagreement can result in the withholding of payment. -----

#### ARTICLE VII- RECORDS AND AUDIT

  
 A. Records of work performed under this Agreement are to be retained by PRSEMS for at least three (3) years after final payment and all pending matters are closed. If an audit, litigation, or other action involving the records is started before the end of the three-year period, the records must be retained until all issues arising out of the action are resolved or until the end of the three-year period, whichever is later. PRSEMA agrees to give UPRM, the sponsor NOAA, the

Comptroller General of the United States or of the Commonwealth of Puerto Rico, or any of their authorized representatives, access to these records and any other pertinent books, documents, papers or other records, in order to make audits, examinations, excerpts and transcripts.-----

B. PRSEMA agrees to comply with the requirements of OMB Circular A-133 or Circular A-21 as appropriate. PRSEMA further agrees to provide UPRM with copies of any independent auditors' reports **within** 30 days of their receipt by PRSEMA. Where the report includes instances of non-compliance with federal laws and regulations, PRSEMA shall provide copies of responses to the report and a plan for corrective action. -----

### ARTICLE VIII- PATENTS AND INVENTIONS

Pursuant to the Bayh-Dole Act and Executive Order 12591 (April 10, 1987), all recipients of federal research funding (i.e., all federal grantees and contractors and consortium participants and other organizations receiving funds under federal grants and contracts, whether small businesses, large businesses, or non-profit organizations) are subject to the same invention reporting requirements and regulations. These are included in the regulations issued by the Department of Commerce, found at 37 CFR Part 401. -----

For purposes of this Subcontract, UPRM is the grantor. PRSEMA will establish and implement an employee invention reporting policy to identify the parties who perform work under this Subcontract and who may be reasonably expected to make inventions. The determination of the rights of ownership and disposition of inventions resulting from the performance of the work done under this Subcontract and the administration of such inventions shall be in accordance with these policies and the policies of UPRM, which are contained in Certification 132 (2002-2003) of the University of Puerto Rico Board of Trustees (Institutional Policy on Patents, Inventions and Their Commercialization). -----

Intellectual Property of any work or publication developed under this subcontract should be in accordance with UPRM policies contained in the Certification 93-140 (Institutional Policy Regarding Intellectual Property). -----

#### IX (A) - Joint Intellectual Property

1. Joint Inventions. The parties shall have joint title to (i) any invention conceived or first reduced to practice jointly by employees and/or students of the UPRM and employees of PRSEMA in the performance of the Research and (ii) any invention conceived or first reduced to practice by employees of PRSEMA in performance of the Research with significant

use of funds or facilities administered by the UPRM (each, a "Joint Invention"). PRSEMA shall be notified of any joint invention promptly after an invention disclosure is received by the UPRM Technology Transfer Office. Both parties, UPRM and PRSEMA, shall have equal rights to file a patent application on a joint invention in the names of both parties. All expenses incurred in obtaining and maintaining any patent on such joint invention shall be equally shared except that, if one Party declines to share in such expenses, the other party may take over the prosecution and maintenance thereof, at its own expense, provide that the title to the patent remains in the names of both Parties.-----


2. JOINTLY DEVELOPED COPYRIGHTABLE MATERIALS. Copyrightable materials, including computer software, developed in the performance of the Research (i) jointly by employees and/or students of the UPRM and employees of PRSEMA, or (ii) by employees of PRSEMA with significant use of funds or facilities administered by the UPRM, shall be jointly owned by both parties, who shall each have the independent, unrestricted right to dispose of such copyrightable materials and their share of the copyrights therein as they deem appropriate, without any obligations of accounting to the other party.-----

#### ARTICLE X- RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE



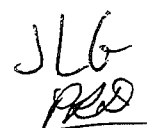

Unless otherwise specified in this Agreement, rights in Technical Data and Computer Software are as specified in SBIR Data Rights Notice located at FAR 52.227-20(d). These titles and sections are incorporated into this Agreement by this reference. -----

#### ARTICLE XI- NAMES AND LOGOS



Neither party shall use the name or logos of the other in any advertising, sales, promotion, or other publicity matter without prior written approval. -----

#### ARTICLE XII- INDEMNIFICATION



The UPRM is responsible for its own wrongful or negligent acts or omissions, and those of its directors, officers, employees, and agents to the extent that the same arise out of or on account of any failure on the part of UPRM to perform any work or duty required under the terms of this Agreement, or from risks of personal injury or property damage attributable to the negligence or intentional misconduct of UPRM. -----

PRSEMA is responsible for its own wrongful or negligent acts or omissions, and those of its directors, officers, employees, and agents to the extent that the same arise out of or on account of any failure on the part of PRSEMA to perform any work or duty required under the terms of this Agreement, or from risk of personal injury or property damage attributable to the negligence or intentional misconduct of PRSEMA. -----

#### ARTICLE XIII- NO DISCRIMINATION


Both parties are equal opportunity employers and do not discriminate on the basis of sex, race, color, age, religion, national origin or handicap, veteran status, religious or political beliefs. This policy is consistent with relevant government statues and regulations, including those pursuant to Title IX of the Federal Rehabilitation Act of 1973, as amended. -----



#### ARTICLE XIV- CERTIFICATIONS

Acceptance of this Subagreement constitutes certification that PRSEMA is not presently debarred, suspended, proposed for disbarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.-----

 Acceptance of this Subagreement constitutes certification that PRSEMA is not delinquent on any Federal debt. -----

Acceptance of this Subagreement constitutes certification that PRSEMA is in compliance with OMB Circular A-133, OMB Circular A-110 (if applicable) and OMB Circular A-21 (if applicable).-----

 Acceptance of this Subcontract constitutes certification that to the best of PRSEMA knowledge and belief: -----

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- a. No federal appropriated funds have been paid or will be paid, by or on behalf of the Subcontractor, to any person for influencing or attempting to influence an office or employee of any agency, Member of Congress in connection with the awarding of a 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.-----
  - b. If funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence
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an officer or employee of any agency, a member of Congress, in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit standard Form LLL- "Disclosure Form to Report Lobbying" in accordance with its instructions.-----

ARTICLE XV- DISPUTES

Any dispute arising under this Subagreement shall be brought to the attention of the Director of the UPRM's Research and Development Center. The Director should make a reasonable effort to resolve all issues by negotiation without litigation. However, in the events of necessary legal actions both parties agree to litigate any and all conflicts in the U.S. District Court for Puerto Rico under all applicable US laws and local Puerto Rico laws.-----

This Article shall not be construed to limit the administrative or legal rights otherwise available to the parties in the event of violations of the terms or conditions of this Subagreement. -----

This Subagreement establishes a relationship between the UPRM and the PRSEMA only. It does not establish a relationship between PRSEMA and the Sponsor NOAA. Nor does it establish any employment relationship between University employees and UPRM. -----

ARTICLE XVI- TERMINATION

A. Either party may terminate or suspend this Subagreement with or without cause in whole or in part upon **thirty** (30) days written notice to the other party.

B. In all instances of termination or suspension of the Subagreement by UPRM PRSEMA shall be given written notice of the termination or suspension, including a written explanation of the reason(s) for such action. Where appropriate, PRSEMA shall be given reasonable time to cure any deficiency in its performance. If the deficiency is not corrected within a reasonable time, as defined by UPRM in consultation with PRSEMA, the Subagreement may then be immediately terminated or suspended. -----

C. Within 60 days of the effective date of termination, PRSEMA shall submit to UPRM a final report, a final financial report and final invoice.-----

D. Upon receipt of a notice of termination or suspension as specified above, PRSEMA shall take immediate action to minimize all expenditures and obligations financed by this Subagreement and shall cancel unliquidated obligations

wherever possible. Except as provided below, no further reimbursement shall be mad after the effective date of termination or suspension. -----

PRSEMA shall, within 60 calendar days after the effective date of termination or suspension, repay to UPRM all unexpended funds disbursed by UPRM that are not otherwise obligated by a legally binding transaction applicable to this Subagreement. Should the funds paid by UPRM to PRSEMA be insufficient to cover PRSEMA obligations in the legally binding transaction, PRSEMA may submit to UPRM within 60 calendar days after the effective date of termination or suspension a written claim covering such obligations. If this Agreement is terminated for any reason prior to the Termination Date, UPRM must reimburse PRSEMA for all reasonable and allowable costs incurred by PRSEMA for the Project through the date of termination. However, in no event will UPRM financial obligation for Project exceed the amount specified in Article V. -----

#### XVII-NOTICES

Any official notices required under the terms of this Subagreement shall be hand delivered or sent by Certified Mail, postage prepaid, return receipt requested, to the appropriate individual and address listed below.-----



#### XVIII-ATTACHMENTS

The Following attachments are an integral part of this Subagreement:

- 1) Attachment A: Statement of Work



- 2) Attachment B: Budget
- 3) Attachment C: Subrecipient certifications

XIX-INDEPENDENT CONTRACTOR

In performing activities under this Subagreement, PRSEMA shall be considered as an independent contractor and shall not be entitled to any benefits applicable to employees of UPRM. The employees of PRSEMA shall not be considered as employees of the UPRM. Nothing in this subagreement will be deemed to create an employer-employee or principal-agent relationship between UPRM and PRSEMA employees, consultants, agents or independent contractors. -----  
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XX-REPORTING REQUIREMENTS

PRSEMA will provide the UPRM Principal Investigator, Dr. Víctor A. Huérfano Moreno, technical progress reports. Also, PRSEMA will provide a financial report.-

XXI-WAIVER

No waiver of any term, provision or condition of this Subagreement whether by conduct or otherwise in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such term, provision or condition, or of any other term, provision, or condition of this Subagreement.-----

XXII- MODIFICATION OR AMENDMENT

Amendments and modifications to this Subagreement shall only be in writing and signed by an authorized representative of the UPRM and PRSEMA. -----  
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XXIII-INCORPORATED TERMS OF THE PRIME AGREEMENT

This Subagreement is subject, where applicable, to the terms and conditions of the Prime Agreement. -----  
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XXIV-ENTIRE AGREEMENT

This writing contains the entire agreement of the parties and there are no promises, understandings, or agreements of any kind pertaining to this Agreement other than those written in this Agreement. This Agreement supersedes any previous written or oral representations, statements, negotiations, or agreements. -----



XXV-SEVERABILITY

In the event that any term or provision of this Agreement or any application of a term or provision of this Agreement is deemed illegal, invalid, unenforceable or void, the parties agree that another provision that is legal and enforceable and achieves the same objective will be submitted. If that is not possible, then the parties shall be relieved of all obligations arising under the provision. If the remainder of this Agreement is not affected by such declaration or finding and is capable of substantial performance, then the remainder shall be enforced to the extent permitted by law. -----

XXVI- CONFIDENTIALITY

It is expected that the work of this subagreement can be carried out without any of the parties disclosing confidential information to the other parties. However, should it become necessary to disclose confidential information; the parties will notify each other in advance of the disclosure and will negotiate in good faith with respect to protecting such confidential information.-----

XXVII- EXPORT CONTROL

The University is subject to United States laws and regulations controlling the export of goods, software and technology including technical data, laboratory prototypes and other commodities. The University policy is to comply with all applicable laws and regulations including the Arms Export Control Act, the International Traffic in Arms Regulations ("ITAR"), the Export Administration Regulations ("EAR") and the laws and regulations implemented by the Office of Foreign Assets Control, U.S. Department of the Treasury ("OFAC"). Diversion contrary to U.S. law prohibited. The transfer of certain technical data, services and commodities may require a license from the cognizant agency of the United States Government and/or written assurances by the Sponsor that the Sponsor will not re-export or retransfer the data or commodities, other than prohibited information, to certain foreign countries without prior approval of the cognizant US government agency. While the University agrees to cooperate in securing any license which the cognizant agency deems necessary in connection with this Agreement, the University cannot guarantee that such licenses will be granted. The Sponsor agrees to obtain permission from the US government to re-transfer or re-export for any goods, software and technology that requires such authorization and will not allow any U.S. origin goods, software or technology to be used for any purposes prohibited by United State law, including, without limitation, support for terrorism or for the development, design, manufacture or production of nuclear, chemical or biological weapons of mass destruction. -----


XVIII-ASSIGNMENT

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign this Agreement without the prior written consent of the other party, except to a successor to all or substantially all of its business and assets. Any attempted assignment in violation of this Article 28 is void. -----

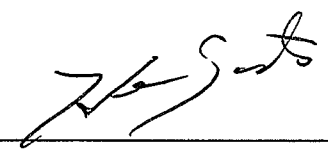
XXIX- ACCEPTANCE AND VALIDITY

This Agreement shall not be considered accepted or effective until signed below by authorized representatives of both of the parties. By signing below, each individual warrants that he or she is authorized to legally bind his or her organization to this Agreement. -----

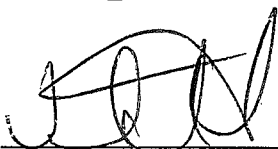
**For the University of Puerto Rico  
Mayagüez Campus:**

  
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Dr. Jose Colucci  
Director  
Research and Development Center

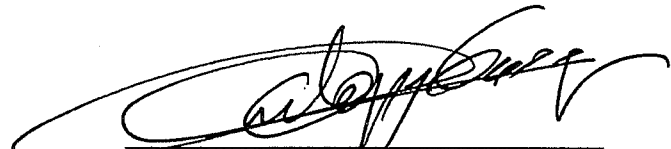
Date: June 11/2010

  
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Dr. Fernando Gilbes  
Director  
Department of Geology, UPRM

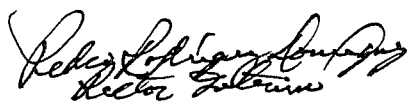
Date: 1/6/2010

  
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Dr. Víctor A. Huérfano Moreno  
Principal Investigator  
Puerto Rico Seismic Network

Date: 01/06/2010

  
\_\_\_\_\_  
Dr. Juan López Garriga  
Dean  
Faculty of Arts & Sciences, UPRM

Date: 1/6/2010

  
\_\_\_\_\_  
Dr. Jorge Rivera Santos  
Interim Chancellor  
University of Puerto Rico

Date: 18/6/10

**For the PUERTO RICO STATE EMERGENCY MANAGEMENT AGENCY:**



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Heriberto N. Sauri, MPH  
Director  
PRSEMA

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Date: 1/6/2010

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