



COMMUNITY DEVELOPMENT BLOCK GRANT – DISASTER RECOVERY (CDBG-DR)

**AMENDMENT A TO THE AGREEMENT  
BETWEEN THE  
PUERTO RICO DEPARTMENT OF HOUSING  
AND  
TORRES-ROSA CONSULTING ENGINEERS, PSC  
Contract Number 2020-DR0033**



THIS **AMENDMENT A TO THE AGREEMENT FOR ARCHITECTURAL ENGINEERING SERVICES** (hereinafter, the "Amendment") is entered into this 3 day of December, 2020, by and between the **PUERTO RICO DEPARTMENT OF HOUSING** (the "PRDOH"), a public agency of the Government of Puerto Rico created under Act No. 97, of June 10, 1972, as amended, 3 L.P.R.A. § 441 et seq., known as the "Department of Housing Organic Act" (the "Organic Act"), with principal offices at 606 Barbosa Ave., San Juan, Puerto Rico, represented herein by its Secretary, Luis C. Fernández Trinchet, of legal age, attorney, single, and resident of Guaynabo, Puerto Rico; and the **TORRES-ROSA CONSULTING ENGINEERS, PSC** (the "**Contractor**"), with principal offices at #26 Carr. 169 Km 7.2 Barrio Camarones, Guaynabo, Puerto Rico 00969, represented herein by Rafael Rosa Castro, in his capacity as Vice-President, of legal age, married, and resident of Caguas, Puerto Rico, duly authorized by Resolution by the CONTRACTOR, collectively the "**Parties**".

**RECITALS AND GENERAL AWARD INFORMATION**

**WHEREAS**, on December 6, 2019, the PRDOH and the Contractor entered into an Agreement, which was registered under Contract No. 2020-DR0033, for the performance of architectural engineering services in connection with the CDBG-DR Program (the "Agreement").

**WHEREAS**, the Parties agreed that PRDOH would pay the Contractor for allowable Architectural Engineering Services performed during the term of the Agreement a maximum amount not to exceed **TWO HUNDRED AND FORTY THREE THOUSAND SIX HUNDRED DOLLARS (\$243,600.00)** from **Account Number: R01A01ADM-DOH-NA 4190-10-000**, for a period of **twelve (12) months**, ending on **December 5, 2020**.

**WHEREAS**, this Amendment A is not intended to affect nor does it constitute an extensive novation of the obligations of the parties under the Agreement, but is rather a modification and amendment of certain terms and conditions under the Agreement and to conform the Agreement to federal, state, and local regulations and statutes. Neither the amount, account, nor specifications of the original Attachments were modified in Amendment A.

**WHEREAS**, the Parties wish to amend the Agreement, as amended, and become subject to the terms of the Agreement, as amended, and this Amendment A.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements set forth in the document, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

**[Remainder of page left blank intentionally]**

**I. AMENDMENTS**

- A. The Parties agree to amend **Article II. TERM OF AGREEMENT, Section A** to extend the Term of the Agreement as follows:

A. This Agreement shall be in effect and enforceable between the Parties from the date of its execution. The term of the original Agreement was for a performance period of **twelve (12) months**, ending on December 5, 2020. The Parties agree to extend the period of performance for an additional period of performance of **twelve (12) months**, starting on December 6, 2020 and ending on December 5, 2021.

- B. The Parties agree to replace **Article II. TERM OF AGREEMENT**, paragraph **C** with the following:

C. The term of this Agreement shall not exceed the lifetime of the initial Grant Agreement between PRDOH and HUD, unless the term of the initial Grant Agreement is extended by HUD, in which case the Agreement shall not exceed said extended period.

- C. The Parties agree to replace **Article IV. COMPENSATION AND PAYMENT**, paragraph **J** with the following:

J. In order for the CONTRACTOR to receive payment for any work performed hereunder, the following certification must be included in each application for payment or invoice submitted to the PRDOH for payment:

**"Under penalty of absolute nullity, I hereby certify that no public servant of the government entity is a party to or has an interest of any kind in the profits or benefits to be obtained under the contract which is the basis of this invoice, and should he be a party to, or have an interest in, the profits or benefits to be obtained under the contract, a waiver has been previously issued. The only consideration to provide the contracted goods or services under the contract is the payment agreed upon with the authorized representative of the government entity. The amount that appears in the invoice is fair and correct. The work has been performed, the goods have been delivered, and the services have been rendered, and no payment has been received therefor."**

- D. The Parties agree to amend **Article VIII. DOCUMENTATION AND RECORD KEEPING** to add a new paragraph **E** as follows:

**E. PII Policy:** The CONTRACTOR must comply with the PRDOH CDBG-DR Personal Identifiable Information Policy, as found in the CDBG-DR Website ([www.cdbg-dr.pr.gov](http://www.cdbg-dr.pr.gov)), which is herein included and made integral part of this Agreement, as it may be updated from time to time.

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- E. The Parties agree to replace **Article XIII. PENALTIES AND LIQUIDATED DAMAGES, A. Penalties, paragraph 1** with the following:

*1. In the event the CONTRACTOR 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, PRDOH may impose sanctions against the CONTRACTOR for any default in accordance with Attachment B and this Section. Refer to all required provisions set forth at 2 C.F.R. § 200.326 and 24 C.F.R. § 570.489(g), and the CDBG-DR Procurement Manual and Contract Requirements, Art. XII, Section 2(a.), as found in the CDBG-DR Website (www.cdbg-dr.pr.gov) which is herein included and made integral part of this Agreement, as it may be updated from time.*

- F. The Parties agree to replace the third paragraph of **Article XV. INSURANCE, C. Related Requirements** with the following:

*The receipt of any certificate does not constitute agreement by PRDOH that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with the requirements of the Agreement. The insurance policies shall provide for **thirty (30) days** written notice to be given to PRDOH in the event coverage is substantially changed, cancelled or non-renewed.*

- G. The Parties wish to amend PRDOH's information on **Article XX. NOTICES** as follows:

To: PRDOH	Luis C. Fernández Trinchet, Esq., CFA Secretary Puerto Rico Department of Housing 606 Barbosa Ave. Juan C. Cordero Dávila Bldg. San Juan, PR 00918
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- H. The Parties agree to replace **Article XXII. SUBCONTRACTS, Section A. General** with the following:

*A. General: All subcontracts shall contain the applicable provisions described in Attachment F (HUD General Provisions), as well as applicable provisions set forth in 2 C.F.R. § 200.101. The PRDOH shall review subcontracts as part of the compliance, monitoring, and oversight process performed by PRDOH or upon request.*

- I. The Parties agree to amend **Article XXVII. SECTION 3 CLAUSE** to add a new **paragraph H** as follows:

*H. 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*

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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 sub contracts 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).

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- J. The Parties agree to eliminate **paragraph F. Compliance with Article 1 of Act No. 48-2013, as amended, 3 L.P.R.A. § 8611, note, of Article XXIII. CERTIFICATION OF COMPLIANCE WITH LEGAL REQUIREMENTS** and renumber the remaining paragraphs in order.

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- K. The Parties agree to replace **Article XXXVIII. MODIFICATION OF AGREEMENT** with the following:

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. Those amendments shall make specific reference to this Agreement, comply with programmatic policies, procedures, and guidelines. Such amendments shall not invalidate this Agreement, nor relieve or release the Parties from their obligations under this Agreement.

However, PRDOH reserves the right to notify in writing to CONTRACTOR any applicable policies, procedures, regulations, requirements, guidelines, or change in law, whether existing or to be established, as well as changes and/or amendments thereof, and the notified policies, procedures, regulations, requirements, guidelines and laws shall be deemed incorporated by reference to this Agreement without the need of executing a separate written and signed amendment.

- L. The Parties agreed to add a new **Article XLVIII. SOLID WASTE DISPOSAL ACT** as follows:

**XLVIII. SOLID WASTE DISPOSAL ACT**

1) In the performance of this contract, the CONTRACTOR shall make maximum use of products containing recovered materials that are Environmental Protection Agency (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.

2) Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site,

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

3) Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include:

- a. procuring only items designated in guidelines of the EPA at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds ten thousand dollars (\$10,000) or the value of the quantity acquired during the preceding fiscal year exceeded ten thousand dollars (\$10,000);
- b. procuring solid waste management services in a manner that maximizes energy and resource recovery; and
- c. establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

M. The Parties agree to add a new **Article XLIV. ORDER OF PRECEDENCE** as follows:

**XLIV. ORDER OF PRECEDENCE**

In the event of an inconsistency in this Agreement or if a conflict occurs between this Agreement and any Attachment, Appendix, Exhibit, or Schedule, unless otherwise specifically stated in those documents, the order of precedence shall be: Federal laws, regulations, and policies applicable to this Agreement, this Contract and the HUD General Provisions (**Attachment E**), the Scope of Work (**Attachment B**), the Performance Requirements (**Attachment F**), and lastly, the CONTRACTOR's quotation.

N. The Parties agree to add a new **Article XLV. CDBG-DR POLICIES AND PROCEDURES** as follows:

**Article XLV. CDBG-DR POLICIES AND PROCEDURES**

In addition to what is established in this Agreement, the CONTRACTOR shall comply with all CDBG-DR program specific and general policies and procedures, including, but not limited to, the Contract and Subrecipient Agreement Manual, OS&H Guideline, MWBE Policy, Procurement Manual and Contractual Requirements, URA & ADP Guidelines, Cross Cutting Guidelines, AFWAM Policy, Section 3 Policy, Personally Identifiable Information, Confidentiality, and Nondisclosure Policy and Conflict of Interest and Standards of Conduct Policy, as found in the CDBG-DR Website ([www.cdbg-dr.pr.gov](http://www.cdbg-dr.pr.gov)), which are herein included and made integral part of this Agreement, as they may be updated from time to time, and reporting requirements as established by the PRDOH.

O. All other terms and conditions of the Agreement, as amended by Amendment A, remain unchanged.

P. Each party represents that the person executing this Amendment A has the necessary legal authority to do so on behalf of the respective party.

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## II. HEADINGS

The titles to the paragraphs of this Amendment 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 Amendment.

## III. FEDERAL FUNDING

The fulfillment of the Agreement, as amended, is based on those funds being made available to the PRDOH as the lead administrative agency for Recovery. All expenditures under the Agreement, as amended, must be made in accordance with the Agreement, as amended, the policies and procedures promulgated under the CDBG-DR Program, and any other applicable laws. Further, CONTRACTOR acknowledges that all funds are subject to recapture and repayment for non-compliance.

## IV. RECAPTURE OF FUNDS

PRDOH may recapture payments it makes to CONTRACTOR that (i) exceed the maximum allowable rates; (ii) are not allowed under applicable laws, rules, or regulations; or (iii) are otherwise inconsistent with the Agreement, as amended, including any unapproved expenditures. CONTRACTOR must refund such recaptured payments within **thirty (30) days** after the PRDOH issues notice of recapture to CONTRACTOR.

## V. OVERPAYMENT

CONTRACTOR shall be liable to the PRDOH for any costs disallowed pursuant to financial and/or compliance audit(s) of funds received under the Agreement, as amended. CONTRACTOR shall reimburse such disallowed costs from funds other than those CONTRACTOR received under the Agreement, as amended.

## VI. COMPLIANCE WITH LAW

It is the intention and understanding of the Parties hereto that each and every provision of law required to be inserted in the Agreement, as amended, should be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is deemed to be inserted and if, through mistake or otherwise, any such provision is not inserted herein or is not inserted in correct form, then the Agreement, as amended, shall forthwith, upon the application of any Party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of any Party.

## VII. SUBROGATION

The Contractor acknowledges that funds provided through the Agreement, as amended, are Federal funds administered by HUD under the CDBG-DR Program and that all funds provided by the Agreement, as amended, are subject to audit, disallowance, and repayment. Any disagreement with adverse findings may be challenged and subject to Federal regulation, however, the Contractor shall promptly return any and all funds to the PRDOH, which are found to be ineligible, unallowable, unreasonable, a duplication of benefits, or non-compensable, no matter the cause. This clause shall survive indefinitely the termination of the Agreement, as amended.

## VIII. COMPTROLLER REGISTRY

The PRDOH shall remit a copy of this Amendment to the Office of the Comptroller for registration within **fifteen (15) days** following the date of execution of this Amendment and any subsequent amendment hereto. The services object of this Amendment may not be invoiced or paid until this Amendment has been registered by the PRDOH at the Comptroller's Office, pursuant to Act No. 18 of October 30, 1975, as amended by Act No. 127 of May 31, 2004.

## IX. ENTIRE AGREEMENT

The Agreement and this Amendment constitute the entire agreement among the Parties for the use of funds received under the Agreement and this Amended Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written among the Parties with respect to the agreement.

**X. SEVERABILITY**

If any provision of this Amendment is held invalid, the remainder of the Amended Agreement shall not be affected thereby, and all other parts of this Amendment shall nevertheless be in full force and effect.

**XI. COUNTERPARTS**

This Amendment may be executed in any number of counterparts, each of whom shall be deemed to be an original, however, all of which together shall constitute one and the same instrument. If the Amendment is not executed by the PRDOH within **thirty (30) days** of execution by the other party, this Amendment shall be null and void.

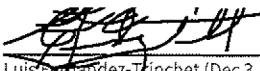
**XII. SURVIVAL OF TERMS AND CONDITIONS**

The terms and conditions of the Agreement, as amended, related to the following subjects shall survive the termination or expiration of the Agreement, as amended: interpretive provisions; consideration; warranties; general affirmations, federal assurances, federal and state certifications; CDBG-DR and state funding, recapture of CDBG-DR and/or state funds, overpayment of CDBG-DR and/or state funds; ownership and intellectual property, copyright; records retention methods and time requirements; inspection, monitoring and audit; confidentiality; public records; indemnification and liability; infringement of intellectual property rights; independent CONTRACTOR relationship; compliance with laws; notices; choice of law and venue; severability; dispute resolution; consolidations, merger and dissolution. Terms and conditions that, explicitly or by their nature, evidence the Parties' intent that they should survive the termination or expiration of the Agreement, as amended, shall so survive.

**IN WITNESS THEREOF** the Parties here to executive this Amendment A in San Juan, Puerto Rico, on the above written date.

**DEPARTMENT OF HOUSING**

**TORRES-ROSA CONSULTING ENGINEERS,  
PSC**

  
Luis C. Fernández Trinchet (Dec 3, 2020 18:01 AST)  
**Luis C. Fernández Trinchet, Esq., CFA**  
Secretary

  
Rafael Rosa (Dec 3, 2020 13:36 AST)  
**Rafael Rosa Castro**  
Vice-President  
DUNS Number: 966763294









# Amendment A to Torres-Rosa Consulting Engineers, PSC (Architectural Engineering Services)

Final Audit Report

2020-12-03

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## "Amendment A to Torres-Rosa Consulting Engineers, PSC (Architectural Engineering Services)" History

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