



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

**AMENDMENT A TO AGREEMENT FOR
GRANT MANAGEMENT SERVICES
BETWEEN THE
PUERTO RICO DEPARTMENT OF HOUSING
AND
HORNE, LLP
Contract No. 2019-DR0001**



This **AMENDMENT A TO THE AGREEMENT FOR GRANT MANAGEMENT SERVICES**, (hereinafter referred to as the "Amendment") is entered into in San Juan, Puerto Rico, this 17 day of April, 2020, by and between the **PUERTO RICO DEPARTMENT OF HOUSING** (hereinafter, "PRDOH"), a public agency created under Law No. 97 of June 10, 1972, as amended, 3 LPRA § 441 *et seq.*, known as the Department of Housing Governing Act with principal offices at 606 Barbosa Avenue, San Juan, Puerto Rico, herein represented by Luis C. Fernández Trinchet, attorney, of legal age, single, and resident of Guaynabo, Puerto Rico, in his capacity as Secretary; and **HORNE, LLP** (hereinafter, the "CONTRACTOR"), with principal offices in 269 Ponce de León Avenue, San Juan, Puerto Rico 00917, herein represented by Samir El Hage Arocho, in his capacity as Partner, of legal age, married, and resident of Canóvanas, Puerto Rico, duly authorized by Resolution by the CONTRACTOR.

I. -- RECITALS AND GENERAL INFORMATION

WHEREAS, on May 3rd, 2019, the PRDOH and the Contractor entered into an Agreement for Grant Management Services in connection with the CDBG-DR Program for a period of **thirty-six (36) months** from the day of its execution, ending in May 2, 2022, for one hundred twenty two million five hundred three thousand six hundred and eighty nine dollars (\$122,503,689.00), registered as Contract Number 2019-DR0001 (hereinafter, "the Agreement").

WHEREAS, this Amendment does not affect the term nor the amount of the Agreement.

WHEREAS, the Parties have agreed to amend the Agreement to modify the IT rates contained under the Main Services Schedule in the Compensation Schedule (**Attachment G**), as well to conform the Agreement to Federal and State laws and regulations as set forth in the sections below.

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

NOW THEREFORE, in consideration of the mutual promises and the terms and conditions set forth herein, the PRDOH and the CONTRACTOR agree as follows:

TERMS AND CONDITIONS

II. - Amendments

- A. The Parties intend to replace **Attachment G: Compensation Schedule** of the Agreement with a new **Attachment G: Compensation Schedule** which is incorporated in to the Agreement by reference and is hereby made part of the Agreement. (Exhibit 1 of this Amendment)

- B. The Parties intend to amend **Article IV. COMPENSATION AND PAYMENT** to add new **Paragraphs G and H** as follows, and **renumber Paragraph G as Paragraph I**:

G. CONTRACTOR shall be liable to the PRDOH for any costs disallowed pursuant to financial and/or compliance audit(s) of funds received under this Agreement if the disallowed costs are the proximate result of negligence and/or oversight on the part of CONTRACTOR and the disallowed costs. CONTRACTOR shall be provided timely notice with a **ten (10) day** period to cure any disallowed costs that result from its negligence and/or oversight. If after the term provided herein, CONTRACTOR is unable to produce an adequate remedy, at the satisfaction of PRDOH, CONTRACTOR shall reimburse such disallowed costs from funds other than those CONTRACTOR received under this Agreement.

H. The CONTRACTOR acknowledges and agrees to repay any CDBG-DR funds used for ineligible costs which are deemed to directly relate to CONTRACTOR negligence and/or oversight.

- C. The Parties intend to replace **Paragraph B of Article VII. OWNERSHIP AND USE OF DOCUMENTS** with the following:

B. Proof of expenditures incurred by the CONTRACTOR on behalf of PRDOH shall be made available to PRDOH. The CONTRACTOR agrees to maintain accurate records and files of all contract documents, correspondence, book estimates, bills, and other information related to the CONTRACTOR account. These documents shall be open for the PRDOH examination at all reasonable times during the term of this Agreement, and up to **five (5) years** from closeout of the grant to the state, or the period required by other local applicable laws and regulations.

- D. The Parties intend to replace PRDOH's notice information in **Article XVII. NOTICES** as follows:

To: PRDOH Luis C. Fernández Trinchet, Esq., CFA
606 Barbosa Ave.
Juan C. Cordero Dávila Bldg.
San Juan, PR 00918

- E. The parties intend to replace **Article XIX. SUBCONTRACTS** as follows:

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.

B. **Specific Requirements:** All subcontracts shall contain provisions specifying:

- i. That the work performed by the subcontractor be in accordance with the applicable terms of this Agreement between the PRDOH and CONTRACTOR;

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

C. **Monitoring:** CONTRACTOR shall diligently monitor all subcontracted services. If CONTRACTOR discovers any areas of noncompliance, CONTRACTOR shall provide the PRDOH summarized written reports supported with documented evidence of corrective action.

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

E. **Notification:** CONTRACTOR shall notify and provide a copy of any and all subcontracts related to this Agreement and CDBG-DR funds to the Contract Administration Area of the PRDOH CDBG-DR Legal Division within **three (3) days** of its execution.

F. The Parties intend to amend **Article XXI. CERTIFICATION OF COMPLIANCE WITH LEGAL REQUIREMENTS** to add new **Paragraphs J and K** as follows and **renumber Paragraph J as L:**

J. **Compliance with Act No. 45 of April 18, 1935, as amended, 11 L.P.R.A.**

§ 1, et seq.: The CONTRACTOR certifies and guarantees that at the signing of this Agreement has valid insurance issued by the State Insurance Fund Corporation (CFSE, for its Spanish Acronym), as established by Act No. 45, *supra*, known as the "Puerto Rico Workers' Accident Compensation Act".

K. **Compliance with Act No. 168-2000, as amended, 8 L.P.R.A. § 711 , et**

seq.: The CONTRACTOR is in full compliance with Act No. 168-2000, as amended, known as "Act for the Improvement of Elderly Support of Puerto Rico."

G. The Parties intend to modify **Article XX. SECTION 3** to add new **Paragraphs F and G** as follows and **renumber Paragraph F as H:**

F. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and

opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and 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).

G. The Contractor agrees to submit, and shall cause its subcontractors to submit, quarterly reports to the PRDOH detailing the number of new employees hired, the number of new Section 3 employees hired, and any affirmative efforts made to direct hiring efforts to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing during the previous quarter.

H. The Parties intend to replace **Article XXVI. SUSPENSION AND DEBARMENT** with the following:

A. This Agreement is a covered transaction for purposes of 2 C.F.R. part 180 and 2 C.F.R. part 2424. As such, the CONTRACTOR is required to verify that none of the CONTRACTOR, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

B. The CONTRACTOR must comply with 2 C.F.R. part 180, subpart C and 2 C.F.R. part 2424, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

C. This certification is a material representation of fact relied upon by PRDOH. If it is later determined that the CONTRACTOR did not comply with 2 C.F.R. part 180, subpart C and 2 C.F.R. part 2424, in addition to remedies available to PRDOH, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

D. The CONTRACTOR agrees to comply with the requirements of 2 C.F.R. part 180, subpart C and 2 C.F.R. part 2424, while this Agreement is valid. The CONTRACTOR further agrees to include a provision requiring such compliance in its lower tier covered transactions.

I. The parties intend to replace **Article XXXIII. 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.

J. The Parties intend to add a new **Article XLVII. SOLID WASTE DISPOSAL ACT** as follows:

XLVII. 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.

K. The Parties intend to add a new **Article XLVIII. PERFORMANCE WARRANTY** as follows:

XLVIII. PERFORMANCE WARRANTY

(a) CONTRACTOR warrants that it will perform all work and provide all Deliverables under this Contract in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

(b) CONTRACTOR warrants that all Deliverables it completes under this Contract shall: meet or exceed the standards of CONTRACTOR's trade, profession, or industry; meet or exceed the specifications set



forth in the Attachments to this Agreement; and be fit for ordinary use, of good quality, and with no material defects.

(c) If CONTRACTOR submits Deliverables that do not meet specifications, fails to complete Deliverables timely, or fails to perform its obligation under this Contract, PRDOH may require CONTRACTOR, at its sole expense, to:

1. repair or replace Deliverables that do not meet specifications;
2. refund payment for Deliverables that do not meet specifications and accept the return of such Deliverables; and
3. take necessary action to ensure that future performance and Deliverables meet specifications and conform to the Contract.

L. The Parties intend to add a new Article **XLIX. FEDERAL FUNDING** as follows:

XLIX. FEDERAL FUNDING

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

M. The Parties intend to add a new Article **L. RECAPTURE OF FUNDS** as follows:

L. 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 this Agreement, including any unapproved expenditures. CONTRACTOR must refund such recaptured payments within **thirty (30) days** after the PRDOH issues notice of recapture to CONTRACTOR.

N. The Parties intend to add a new Article **LI. OVERPAYMENT** as follows:

LI. OVERPAYMENT

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

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O. The Parties intend to add a new Article **LII. CONSOLIDATIONS, MERGERS, OR DISSOLUTIONS** as follows:

LII. CONSOLIDATIONS, MERGERS, OR DISSOLUTIONS

In the event that participating entities are consolidated or merged with another entity or agency, CONTRACTOR will notify PRDOH of such action within a **fifteen (15) day** period of being notified of it. PRDOH will have **fifteen (15) days** to state its position. With PRDOH's written approval, CONTRACTOR must ensure that the resulting entity becomes responsible for CONTRACTOR's tasks under this legal agreement. A timeframe of no more than **fifteen (15) days** from the date that any merger or consolidation becomes effective will be provided to make amendments or transitory changes, so that the tasks assigned to personnel at CONTRACTOR under this Agreement are carried out by the resulting entity with little or no lapse in performance objectives and the ability to fulfill the scope of work for the program as outlined provide notice to any other agency or entity it may consider consolidating or merging with in advance, to advise and provide orientation on CONTRACTOR's duties under this Agreement and make the survival or transfer of those in **Attachments D and E**. CONTRACTOR is to tasks a condition to any merger, consolidation, or dissolution involving CONTRACTOR during the time span of this Agreement.

P. The Parties intend to add a new Article **LIIL. SURVIVAL OF TERMS AND CONDITIONS** as follows:

LIIL. SURVIVAL OF TERMS AND CONDITIONS

The terms and conditions of this Agreement related to the following subjects shall survive the termination or expiration of this Agreement: 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 this Agreement shall so survive.

III.- GOVERNMENT CERTIFICATIONS

On March 12, 2020, the Governor of Puerto Rico declared an Island-wide state of emergency in response to the world pandemic of the virus Covid-19 through Executive Order OE-2020-20. On March 15, the Governor established, through Executive Order OE-2020-23, a curfew and ordered social distancing for all citizens and the closure of all governmental operations, except those related to essential services until March 30, 2020.

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On March 30, 2020, the Governor of Puerto Rico executed Executive Order OE-2020-029 with the purpose of extending the duration of an Island-wide lockdown established by Executive Order OE-2020-23 until April 12, 2020, among other measures. It is thus impossible for citizens, including the Contractor, to obtain certain government certifications.

However, the Contractor understands that in order to maintain a contractual relationship with the PRDOH, it must submit certain documents and certifications, including a certification of filing income tax for movable objects from the Puerto Rico Municipal Tax Collection Center (CRIM, for its Spanish acronym).

Considering the extenuating circumstances through which Puerto Rico and the world is going through, PRDOH will execute this Amendment A to the Contract conditioned to the submission of the aforementioned document within **ten (10) days** of the government agencies returning to serve citizens.

IV. HEADINGS

The titles to the paragraphs of this Amendment A 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.

V. - 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.

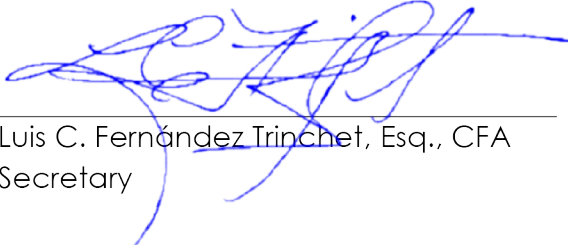
VI. SEVERABILITY


If any provision of this Amendment shall operate or would prospectively operate to invalidate the Agreement, as amended, in whole or in part, then such provision only shall be deemed severed and the remainder of the Agreement, as amended, shall remain operative and in full effect.

IN WITNESS THEREOF, the parties hereto execute this Amendment A in the place and on the date first above written.

DEPARTMENT OF HOUSING

HORNE, LLP


Luis C. Fernández Trinchet, Esq., CFA
Secretary


Samir El Hage
Partner
DUNS No. 075071548



GOVERNMENT OF PUERTO RICO
Department of Housing

Attachment G

Compensation Schedule

GRANT MANAGEMENT SERVICE
Community Development Block Grant – Disaster Recovery
Puerto Rico Department of Housing
GSA E-BUY RFQ #1335494

A. Main Services

Position	Other Positions	Hourly Rate	GSA Category
Senior Program Manager		\$200.00	Senior Manager/Director
Program Manager Assistant		\$140.00	Manager
Senior Policy Consultant	Senior Policy Consultant Lead	\$170.00	Open Market
Policy Consultant Assistant		\$105.00	Open Market
Senior Compliance Consultant		\$200.00	Senior Manager/Director
Compliance Consultant Assistant		\$105.00	Manager
Senior Procurement Consultant	Senior Contracting Consultant	\$165.00	Open Market
Procurement Consultant Assistant	Contracting Assistant	\$105.00	Open Market
Senior Financial Consultant		\$190.00	Senior Manager/Director
Financial Consultant Assistant		\$105.00	Open Market
Senior Operations Consultant		\$185.00	Open Market
Operations Consultant Assistant		\$105.00	Open Market
DOB Lead	QA/QC Lead	\$150.00	Open Market
DOB PM	QA/QC PM	\$115.00	Open Market
DOB Associate	QA/QC Associate	\$75.00	Open Market
Eligibility Lead	QA/QC Lead	\$150.00	Open Market
Eligibility PM	QA/QC PM	\$115.00	Open Market
Eligibility Associate	QA/QC Associate	\$75.00	Open Market
Housing Management Lead	Infrastructure Lead, Multisector Lead	\$190.00	Open Market
Housing Management PM	Infrastructure PM, Multisector PM	\$130.00	Open Market
Housing Management Associate	Infrastructure Associate, Multisector Associate	\$85.00	Open Market
Econ Dev Lead		\$160.00	Open Market
Econ Dev PM		\$120.00	Open Market
Econ Dev Associate		\$85.00	Open Market
Green Energy Lead	Planning Lead	\$145.00	Open Market
Green Energy PM	Planning Program Manager	\$115.00	Open Market
Green Energy Associate	Planning Associate	\$75.00	Open Market
EHP Consultant	Permits Consultant - Environmental Consultant	\$165.00	Open Market
EHP PM	Permits PM - Environmental PM	\$115.00	Open Market
EHP Associate	Permits Associate - Environmental Associate	\$85.00	Open Market
428 Lead	FEMA Lead	\$150.00	Open Market
428 PM	FEMA PM	\$115.00	Open Market
428 Associate	FEMA Associate	\$85.00	Open Market
S.3 and Fair Housing Lead	S.3/Fair Housing/Davis Bacon/Minimum Wage Lead	\$125.00	Open Market
S.3 and Fair Housing PM	S.3/Fair Housing/Davis Bacon/Minimum Wage PM	\$105.00	Open Market
S.3 and Fair Housing Associate	S.3/Fair Housing/Davis Bacon/Minimum Wage Associate	\$75.00	Open Market
External Relations Lead		\$150.00	Open Market
External Relations PM		\$110.00	Open Market
External Relations Associate		\$85.00	Open Market
Training Lead		\$150.00	Open Market
Training PM		\$95.00	Open Market
Training Associate		\$85.00	Open Market
IT Lead		\$155.00	Open Market
IT PM		\$130.00	Open Market
IT Associate		\$105.00	Open Market
Senior Analyst		\$75.00	Open Market
Analyst Associate		\$53.00	Open Market

B. Grant Management System

Description	Unit	Quantity	Unit Cost	Total Unit Cost
IT Deployment**	Year	1	\$ 2,500,000.00	\$ 2,500,000.00
Technical Support - Custom Development	Hourly	See Note (1)	\$ 2,520,000.00
Annual Canopyuser License	Unit	1,500	\$ 500.00	\$ 750,000.00
Total				\$ 5,770,000.00

**Payment for IT Deployment in the amount of Two Million, Five Hundred Thousand Dollars (\$2,500,000) shall be made either when the Contractor implements the fourteen (14) programs that are the subject of the \$1.5 Billion Action plan not in the Amendment AP, including but not limited to R3, or within One Hundred and Twenty Days (120) of execution of the Agreement, whichever occurs earlier.

Note (1): Rates accordinly to the Main Services; IT Lead \$155.00; IT PM \$130.00; IT Associate \$105.00, For the use of Custom Development of the Grant Management System