



AMENDMENT C

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

**AMENDMENT C TO AGREEMENT FOR
GRANT MANAGEMENT SERVICES
BETWEEN THE
PUERTO RICO DEPARTMENT OF HOUSING
AND
HORNE, LLP**

Contract No. 2019-DR0001



THIS AMENDMENT C TO AGREEMENT FOR GRANT MANAGEMENT SERVICES, (hereinafter referred to as the "**AMENDMENT C**") is entered in San Juan, Puerto Rico, this 25 day of February _____, 2022, by and between the **PUERTO RICO DEPARTMENT OF HOUSING** (hereinafter, the "PRDOH"), a public agency created under Law No. 97 of June 10, 1972, as amended, 3 L.P.R.A. § 441 *et seq.*, known as the "Department of Housing Governing Act" (hereinafter, the "Organic Act"), with principal offices at 606 Barbosa Avenue, San Juan, Puerto Rico 00918, herein represented by Hon. William O. Rodríguez Rodríguez, attorney, of legal age, single, and resident of San Juan, 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, professional engineer, of legal age, married, and resident of Canóvanas, Puerto Rico, in his capacity as Partner, duly authorized by the CONTRACTOR; collectively the "Parties".

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I. RECITALS AND GENERAL AWARD INFORMATION

WHEREAS, on May 3, 2019, the Parties entered into an Agreement for Grant Management Services for a period of **thirty six (36) months** from the day of its execution, ending on May 2, 2022, registered as Contract Number 2019-DR0001 (hereinafter, "**the Agreement**"). The PRDOH and the Contractor, agreed that, for allowable Grant Management Services performed during the term of the Agreement, PRDOH would pay a maximum amount not to exceed **ONE HUNDRED TWENTY TWO MILLION FIVE HUNDRED THREE THOUSAND SIX HUNDRED AND EIGHTY NINE DOLLARS (\$122,503,689.00)** to the Contractor.

WHEREAS, as per Article XXXIII of the Agreement, the Agreement may be amended in writing and signed by a duly authorized representative of each party. Nonetheless, the amendment shall not invalidate the Agreement, nor release the Parties from their obligations under the Agreement.

WHEREAS, the Agreement was amended on April 17, 2020, through Amendment A, registered as Contract No. 2019-DR0001A, to amend the **Attachment G** ("Compensation Schedule"), as well to conform the Agreement to federal, state and local regulations and statutes. Neither the amount, account, nor the term of the Agreement were modified in Amendment A.

WHEREAS, the Agreement was amended a second time on September 16, 2021, through Amendment B, registered as Contract No. 2019-DR0001B, to amend the **Attachment D** ("Scope of Work"), as well to conform the Agreement to federal, state and local regulations and statutes. Neither the amount, account, nor the term of the Agreement were modified in Amendment B.

WHEREAS, the Parties wish to amend the Agreement to amend and rename **Attachment E** ("Insurance Requirements (DV-OSPA-78-5)").

WHEREAS, this **AMENDMENT C** also conforms the Agreement to federal, state, and local regulations and statutes.

WHEREAS, this **AMENDMENT C** is not intended to affect, nor does it constitute an extinctive 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.

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

WHEREAS, the PRDOH has the legal power and authority, in accordance with its enabling statute, the Organic Act, the Federal laws, and regulations creating and allocating funds to the CDBG-DR Program, and the current Action Plan, to enter into this **AMENDMENT C**.

WHEREAS, the CONTRACTOR has duly adopted the Certificate of Authority dated March 31, 2020, authorizing the CONTRACTOR, via its Partner, Mr. Samir El Hage Arocho, to enter into the Agreement, as amended, with the PRDOH. By signing this **AMENDMENT C**, the CONTRACTOR assures PRDOH that CONTRACTOR shall comply with all the requirements described herein.

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

II. TERMS AND CONDITIONS

A. SAVINGS CLAUSE

The information included in this **AMENDMENT C** serves the purpose of modifying and amending certain terms and conditions under the Agreement, including any modified Exhibits. All provisions of the original Agreement shall continue to be in full force and effect, as amended by this **AMENDMENT C**.

B. SCOPE OF THE AMENDMENT

The Parties acknowledge and agree that this **AMENDMENT C** encompasses a modification of the **Attachment E** ("Insurance Requirements (DV-OSPA-78-5)") of the Agreement.

C. AMENDMENTS

i. **Attachment E** ("Insurance Requirements (DV-OSPA-78-5)") of the Agreement is being replaced by a modified and renamed **Attachment E** ("**Insurance Requirements**") hereto incorporated by reference into the Agreement. (See **Exhibit I** of this **AMENDMENT C**).

ii. The Parties agree to amend **Article XIII INSURANCE, Section A** as follows:

*The CONTRACTOR shall keep in force and effect for the period beginning from the execution of the Agreement and ending at the completion of all services to be provided hereunder, insurance policies in compliance with the PRDOH's requirements as set forth in the Insurance Requirements, attached hereto and made an integral part hereof as **Attachment E**. The CONTRACTOR shall meet all other insurance requirements as may be imposed by PRDOH from time to time.*

*Upon the execution of this Agreement, the CONTRACTOR shall furnish PRDOH with original and two (2) certified copies of the insurance policies described in **Attachment E** and any other evidence PRDOH may request as to the policies' full force and effect.*

Any deductible amount, under any of the policies, will be assumed in whole by the CONTRACTOR for any and all losses, claims, expenses, suits, damages, costs, demands or liabilities, joint and several of whatever kind and nature arising from the Agreement resulting from this solicitation by and between the CONTRACTOR and PRDOH.

The PRDOH shall not be held responsible under any circumstances for payments of any nature regarding deductibles of any Commercial Liability Policies for the aforementioned Agreement.

iii. The Parties agree to amend **Article XVII NOTICES** as follows:

All notices, requests, approvals, and consents of any kind made pursuant to this Agreement shall be in writing and shall be deemed to be effective as of the date sent by certified mail, return receipt requested, or email. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice. Communication and details concerning this Agreement shall be directed to the following contract representatives:

PRDOH:

Hon. William O. Rodríguez Rodríguez, Esq.
Secretary
Puerto Rico Department of Housing
606 Barbosa Avenue
Juan C. Cordero Building
Río Piedras, Puerto Rico 00918

Contractor:

Samir El Hage Arocho, PE
Partner
Horne, LLP
269 Ponce de León Avenue,
San Juan, Puerto Rico 00917

iv. The Parties agree to add new **Article LIV CDBG-DR POLICIES AND PROCEDURES** as follows:

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 for the CDBG-DR Program, 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), 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.

III. HEADINGS

The titles to the paragraphs of this **AMENDMENT C** 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 C**.

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IV. 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, the CONTRACTOR acknowledges that all funds are subject to recapture and repayment for non-compliance.

V. 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.

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VI. 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.

VII. COMPTROLLER REGISTRY

The PRDOH shall remit a copy of this **AMENDMENT C** to the Office of the Comptroller for registration within **fifteen (15)** days following the date of execution of this **AMENDMENT C** and any subsequent amendment hereto. The services object of this **AMENDMENT C** may not be invoiced or paid until this **AMENDMENT C** 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.

VIII. ENTIRE AGREEMENT

The Agreement and this **AMENDMENT C** 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.

IX. SEVERABILITY

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

X. COUNTERPARTS

This **AMENDMENT C** 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 C** is not executed by the PRDOH within **thirty (30) days** of execution by the other party, this **AMENDMENT C** shall be null and void.

XI. SURVIVAL OF TERMS AND CONDITIONS

The terms and conditions of this Agreement, as amended, related to the following subjects shall survive the termination or expiration of this 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, change of name, 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, as amended, shall so survive.

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IN WITNESS THEREOF, the Parties hereto execute this **AMENDMENT C** in the place and on the date first above written.

PUERTO RICO DEPARTMENT OF HOUSING

HORNE,LLP

William O. Rodríguez Rodríguez
William O. Rodríguez Rodríguez (Feb 25, 2022 16:33 AST)

Hon. William O. Rodríguez Rodríguez, Esq.
Secretary
DUNS No. 125967484

Samir El Hage
Samir El Hage (Feb 25, 2022 13:32 AST)

Samir El Hage Arocho, PE
Partner
DUNS No. 075071548



INSURANCE REQUIREMENTS
Grant Management Services
Community Development Block Grant – Disaster Recovery
Puerto Rico Department of Housing
Contract Division

SPECIAL INSURANCE AND BONDING SPECIFICATIONS
FOR ACQUISITIONS

LICITATION NUMBER: CDBG-DR-GSA E-BUY-RFQ-1335494

A. The successful Contractor before commencing work or receiving a written notice to proceed with, or being allowed to start to work, must submit to the **Puerto Rico Department of Housing (*PRDOH)**, all the hereafter mentioned insurance policies and/or bonds, thus including all endorsements and agreements required under the special contractual conditions as per the following:

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(X) 1. State Insurance Fund Workmen's Compensation Insurance Policy

In accordance with the Workmen's Compensation Act No. 45, to facilitate its acquisition, the ***PRDOH** shall provide a letter to the successful supplier addressed to the State Insurance Fund.

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(X) 2. Commercial General Liability (Special Form)
including the following insurance coverage

COVERAGE	LIMIT
I. Commercial General Liability:	\$2,000,000
• General Aggregate	\$2,000,000
• Products & Complete Operations	\$1,000,000
• Personal Injury & Advertising	\$1,000,000
• Each Occurrence	\$1,000,000
• Fire Damage	\$100,000
• Medical Expense	\$10,000 (Any one person)
• Employers Liability Stop Gap	\$1,000,000
• Bodily Injury Accident Employee	\$1,000,000
• Each Accident	\$1,000,000

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COVERAGE	LIMIT
<ul style="list-style-type: none"> • Bodily Injury by Disease 	
Each Employee	\$1,000,000
Each Accident	\$1,000,000

(X) 3. Crime Insurance

COVERAGE REQUIRED
IV. Employee Dishonesty
<ul style="list-style-type: none"> • Limit - \$1,000,000 Per Occurrence • Deductible \$5,000 Per Occurrence
V. Forgery and Alteration
<ul style="list-style-type: none"> • Limit - \$1,000,000 Per Occurrence • Deductible \$25,000 Per Occurrence
VI. Theft Disappearance & Destruction (Inside/Outside)
<ul style="list-style-type: none"> • Limit - \$1,000,000 Per Occurrence • Deductible \$25,000 Per Occurrence
VII. Computer Fraud
<ul style="list-style-type: none"> • Limit - \$1,000,000 Per Occurrence • Deductible \$25,000 Per Occurrence

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(X) 4. Comprehensive Automobile Liability Form Including the following Insurance Coverages

LIMIT
<ul style="list-style-type: none"> • Auto Liability - \$1,000,000 • Physical Damage - \$1,000,000 • Medical Payment - \$ 10,000
The Commercial Auto cover must be applied to the following symbols:
<ul style="list-style-type: none"> • Liability Coverage -1 • Physical Damages – 2 and 8 • Hired – Borrowed Auto - 8 • Non-Owned Auto Liability - 9

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(X) 5. Professional Liability and/or Errors and Omissions Policy

(x) A. Risk, Interest, location and Limits

(x) A.1 Description of work to be done.

(x) A.2 Limit:

(x) each occurrence	\$ 5,000,000
(x) Aggregate	\$10,000,000
(x) Deductible	\$1,000,000

(x) A.3 Certification that the Insurance Contract has been
As Surplus lines coverage under the Commonwealth
Insurance Code, when applicable.

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(X) 6. Umbrella

Limit \$10,000,000

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(X) 7. Payment and Performance Bond Sign and Seal

- () a. A document for the total cost of the project under contract.
- () b. These bond must be issued by a surety **appearing in the latest US Department of Treasury's Listing of Approved Sureties (Circular Letter 570) and authorized to do business in Puerto Rico.**
- () c. **Re-Insurance Agreements: The Acceptable Guarantor Company, must provide the Puerto Rico Department of Housing (*PRDOH) with a Certificate of Re-Insurance Agreement Listing the names of all participating guarantors, indicating the corresponding percentage (%) share of each of the risk pursuant to its written agreement. These must be listed in the Latest Federal Register as Acceptable thrust Companies of Federal Bonds.**

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- () d. Certificate of Authority, Power of Attorney License issued by Commissioner of Insurance.
- (X) 8. The policies to be obtained must contain the following endorsements including as additional insured the **Department of Housing, Puerto Rico Public Housing Administration** and the **Government of Puerto Rico**.
- (X) a. Breach of warranty
(X) b. Waiver and / or Release of Subrogation
(X) c. Additional Insured Clause
(X) d. Hold Harmless Agreement
(X) e. 30 Days Cancellation Clause
- (X) 9. The insurance carrier or carriers which will present said certificates of insurance must have at least a B+ rating according to the Best Rating Guide.

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B. TERMS AND CONDITIONS

1. All Certified Check or bank drafts must be paid to the Order of the Bidding Agency.
2. All Bonds must be issued by an Insurance Company authorized by the Insurance Commissioner of Puerto Rico and must be accompanied by the following documents:
 - a. Certificate of Authority in the name of the Insurer issued by the Insurance Commissioner.
 - b. Power of Attorney, issued by the Insurer, in the name of the attorney-in-fact.
 - c. Power of Attorney License, issued by the Commissioner of Insurance pursuant of the power of attorney issued by said Insurer.
 - d. If at the time the bidding documents are opened, any of the documents referred to in paragraphs a, b, and c above are

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missing, this shall not constitute ground to disqualifying the contractor, but the successful bidder shall submit such documents within two (2) days form the date and time of the auction.

- e. It is implicit that, by issuing the Bid Bond, the insurer undertakes to issue a Performance and Payment Bond in accordance with the conditions of the Auction.

- f. If any bidding or protest, the interest party shall be obligated to write down each risk with its individual cost of premium and shall then reflect the total sum of all Insurance Premiums as project cost.

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C. IMPORTANT NOTICE TO INSURANCE AND SURETY COMPANIES AND THEIR REPRESENTATIVES

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All insurance companies and all guarantors who issue policies or bonds under our special contractual conditions are subject to:

1. Be authorized to do business within the Commonwealth of Puerto Rico and have the corresponding license issued by the Commissioner of Insurance.
2. To be enjoying a good economic situation and to be classified under the Category of B+ by the "Best Rating Guide".
3. Submit to the ***PRDOH** a written certification as evidence of full payment of premiums by the Contractor. Mention each risk coverage premium separately.
4. Avoid sub-contractual obligations of premium financing or any other kind, which may be detrimental to the public interest.
5. Avoid any request for cancellation by the contractor prior to the expiration date of the policy, without the consent of the Insurance Section of the ***PRDOH**: Discuss any refund of unearned premium.

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6. Follow all Federal Bail and Acceptance Insurance Regulations, when applicable.
7. Indicate in the appropriate place of all insurance policies and/or bonds, the full description of the project, work or service to be rendered, as provided in the Special Conditions of Insurance and Bonds, part C.
8. Not to make any amendments to insurance policies and bonds issued under the special conditions mentioned above, unless approved by the Insurance Section of the Department of Housing.
9. To ensure that all insurance policies or bonds are issued to comply with all of our special insurance conditions with respect to the period of coverage, type of risk coverage, as well as all limits, as specified, and also to eliminate those exclusions in accordance with our request.
10. Clarify any questions regarding insurance requirements by any means of communication with the Insurance Section of the *PRDOH under the Secretary for Legal Affairs.

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D. EVIDENCE OF INSURANCE COVERAGE OF EACH SUBCONTRACTOR TO BE SUBMITTED BY THE SUCCESSFUL BIDDER AS THE PRIME CONTRACTOR:

The prime Contractor, as the prime contractor, has the duty to require **each of the subcontractors or subcontractors to maintain in force all insurance policies and/or bonds necessary to cover their individual participation in the risk or risks related to the subcontracted work or service to be rendered.**

Therefore, we emphasize that prior to commencing work or receiving written notice to proceed with such work or being authorized to commence work. **The successful prime contractor has the responsibility to provide the *PRDOH with evidence to the effect that all insurance and/or bonds required under the special conditions or required under the sub-contract to each of the sub-contractors or sub-sub-contractors are current and duly approved by the Insurance Section of the *PRDOH.**

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All insurance policies shall remain in effect for the entire contractual period. So that with any order of change and/or amendment resulting in alteration of the original project completion date or total original cost, the prime contractor shall take the necessary steps to request the insurer to include such changes in all related insurance policies and/or bonds and to submit evidence by appropriate **endorsements with effective dates. Cancellations without consent are not accepted.**

The ***PRDOH** reserves the right to stop any work or service under contract until the breach of these requirements has been remedied, so that any delay in the performance of the contract based on any breach of the insurance coverage requirements shall be deemed the sole responsibility of the Main Contractor.

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E. CONFLICT OR DIFFERENCE BETWEEN THE SPECIFICATIONS OF THE TENDERING, PROCEDURE AND SPECIAL INSURANCE CONDITIONS AND BONDS

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In the event of any conflict or difference in the description of coverage or in amounts or limits, etc., with respect to **Insurance Requirements**, the "*Special Conditions of Insurance and Bonds*" as set forth in this **INSURANCE REQUIREMENTS** shall prevail over any other insurance specifications.

F. CERTIFICATE OF INSURANCE SECTION

We hereby certify, to our best knowledge and understanding, that we have prepared the aforementioned "*Insurance and Bonds Special Conditions*" after a proper evaluation of the related risks, based on the information of the nature of the project and description submitted to us, as requested by the Contracting Program through a written application.

December 14, 2021
Date

Sonia Damaris Rodríguez
Sonia Damaris Rodríguez
Insurance Specialist
CDBG-DR Program









AMENDMENT C_ CONTRACT NO. 2019DR0001

Final Audit Report

2022-02-25

Created:	2022-02-25
By:	Radames Comas Segarra (rcomas@vivienda.pr.gov)
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-  Document e-signed by William O. Rodríguez Rodríguez (w.rodriguez@vivienda.pr.gov)
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