



Amendment D

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

AMENDMENT D TO AGREEMENT FOR
CASE MANAGER SERVICES
BETWEEN THE
PUERTO RICO DEPARTMENT OF HOUSING
AND
TIDAL BASIN CARIBE, LLC
Contract No. 2021-DR0107
Amendment D Contract No. 2021-DR0107D



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This **AMENDMENT D TO AGREEMENT FOR CASE MANAGER SERVICES**, (**Amendment D** or **Amendment**) is entered into in San Juan, Puerto Rico, this 31 day of August, 2023, by and between the **PUERTO RICO DEPARTMENT OF HOUSING (PRDOH)**, a public agency 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 Governing Act", with principal offices at 606 Barbosa Avenue, San Juan, Puerto Rico, herein represented by William O. Rodríguez Rodríguez, attorney, of legal age, single, and resident of Guaynabo, Puerto Rico, in his capacity as Secretary; and **TIDAL BASIN CARIBE, LLC (CONTRACTOR)**, with principal offices in 126 Business Park Drive, Utica, NY, 13502, herein represented by Esrone McDaniels, in his capacity as Chief Operating Officer, of legal age, single, and resident of Atlanta Georgia, duly authorized by Resolution by the CONTRACTOR; collectively, the **Parties**.

I. RECITALS AND GENERAL AWARD INFORMATION

WHEREAS, on March 9, 2021, the PRDOH and the CONTRACTOR entered into an Agreement for Case Manager Services, registered under Contract No. 2021-DR0107, for a maximum amount not to exceed **FOUR MILLION SEVEN HUNDRED FORTY THOUSAND EIGHT HUNDRED SEVENTY-FIVE DOLLARS (\$4,740,875.00)**; from **Account Numbers: R01 E15S8BF-EDC-LM 4190-10-00; R01 E15SBF-EDC-UN 4190-10-00; R02E23RUR-DOA-LM 4190-10-00; R02E23RUR-DOA-UN 4190-10-00; R01A0IADM-DOH-NA 4190-10-00**, ending on March 8, 2023 (**Agreement**).

WHEREAS, as per Article XL 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 May 27, 2022, through Amendment A, registered as Contract No. 2021-DR0107A, to modify and amend certain terms and conditions of the Agreement. Additionally, **Attachment C** (Scope of Services) was replaced by a modified **Attachment C** (Scope of Services), **Attachment D** (Compensation Schedule) was replaced by a modified **Attachment D** (Compensation Schedule), and **Attachment E** (Performance Requirements) was replaced by a modified **Attachment E** (Performance Requirements). The budget was increased by **TWO MILLION DOLLARS (\$2,000,00.00)**, distributed into four accounts: **R02E23RUR-DOA-LM 6090-01-000 (\$560,000.00); R02E1 SSBF-EDC-LM 6090-01-000 (\$360,000.00); R02E23RUR-DOA-UN 6090-01-000 (\$240,000.00); R02E1 SSBF-EDC-UN 6090-01-000 (\$840,000.00)**. The total budget amount of the Agreement increased to **SIX MILLION SEVEN HUNDRED FORTY THOUSAND EIGHT HUNDRED SEVENTY-FIVE DOLLARS (\$6,740,875.00)**. The term of the Agreement was not altered by Amendment A.

WHEREAS the Agreement was amended on October 5, 2022, through Amendment B, registered as Contract No. 2021-DR0107B, to amend the accounts for the **Small Business**

Financing Program (SBF Program) and the **Re-Grow PR Urban and Rural Agriculture Program (Re-Grow Program)**. Additionally, **Attachment H** (Contractor Certification) was amended (mistakenly written as Attachment F). No changes were made to the Agreement's budget or term because of Amendment B.

WHEREAS the Agreement was amended on February 7, 2023, through Amendment C, registered as Contract No. 2021-DR0107C, to extend the term of the Agreement by an additional twelve (12) months, ending on March 8, 2024. Additionally, **Attachment H** (Contractor Certification) was amended, and **Attachment I** (Non-Conflict of Interest Certification) was incorporated into the Agreement. The budget remained the same.

WHEREAS, it is the intention of the Parties that this Amendment is not intended to effect 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 each party represents that the person executing this Amendment has the necessary legal authority to do so on behalf of the respective party.

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. SAVINGS CLAUSE

The information included in this Amendment D serves the purpose of modifying and amending certain terms and conditions under the Agreement, as established in the following Articles III and IV of this Amendment D. All other provisions of the original Agreement, including its attachments, shall continue to be in full force and effect.

III. SCOPE OF AMENDMENT

The PRDOH has decided to modify the Agreement to increase the budget amount assigned to this Agreement by **ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00)**, for a total budget of **EIGHT MILLION TWO HUNDRED FORTY THOUSAND EIGHT HUNDRED SEVENTY-FIVE DOLLARS (\$8,240,875.00)**. The funds shall be allocated in the following manner: **\$750,000.00** for the SBF Program and **\$750,000.00** for the Re-Grow Program. The duration of the Agreement is unaffected by this Amendment D. Lastly, **Attachment H** (Contractor Certification) and **Attachment I** (Non-Conflict of Interest Certification) are being replaced by updated versions of these attachments.

IV. AMENDMENTS

A. The Parties agree to replace **Article IV. COMPENSATION AND PAYMENT, Paragraph B** as follows:

B. *The PRDOH will pay the CONTRACTOR, for allowable services performed during the term of this Agreement, a maximum amount not to exceed **EIGHT MILLION TWO HUNDRED FORTY THOUSAND EIGHT HUNDRED SEVENTY-FIVE DOLLARS (\$8,240,875.00)**; from the following **Account Numbers**: **R01 E15SBF-EDC-LM 4190-10-00; R01 E15SBF-EDC-UN 4190-10-00; R02E23RUR-DOA-LM 4190-10-00; R02E23RUR-DOA-UN 4190-10-00; R01A01ADM-DOH-NA 4190-10-00; R02E23RUR-DOA-LM 6090-01-000; R02E1SSBF-EDC-LM 6090-01-000; R02E23RUR-DOA-UN 6090-01-000; R02E1SSBF-EDC-UN 6090-01-000; R02E1SSBF-EDC-LM 4190-10-000; R02E1SSBF-EDC-UN 4190-10-000; R02E23RUR-DOA-LM 4190-10-000; and R02E23RUR-DOA-UN 4190-10-000.** The additional funds shall be allocated in the*

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following manner: **\$750,000.00** for the SBF Program and **\$750,000.00** for the Re-Grow Program.

B. The Parties agree to amend **Article XXII. SUBCONTRACTS** as follows:

XXII. SUBCONTRACTS

A. General: All subcontracts shall contain the applicable provisions described in **Attachment G** (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;
- 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: Within **three (3) business days** of its execution, the CONTRACTOR shall notify the Contract Administration Area of the PRDOH CDBG-DR/MIT Legal Division and provide a copy of all subcontracts related to this Agreement and CDBG-DR/MIT funds, as well as any other subcontracts listed in **Attachment H** (Contractor Certification Requirement). The CONTRACTOR is in charge of obtaining all certifications from the subcontractors listed in Article XXIII of this Agreement that are required for technical, professional, or consulting services, as well as submitting them with the copy of the subcontract and adhering to all other requirements set forth in Circular Letter 1300-16-16 from the Puerto Rico Department of Treasury. Technical, professional, or consulting services that are employed to carry out the terms of this Agreement are referred to as subcontractors for the purposes of this article if they spend at least 25% of their time on it.

C. The Parties agree to modify **Article LIV. MEMORANDUM NO. 2021-029; CIRCULAR LETTER NO. 013-2021 OF THE OFFICE OF THE CHIEF OF STAFF OF THE**

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GOVERNOR (SECRETARÍA DE LA GOBERNACIÓN) & THE OFFICE OF MANAGEMENT AND BUDGET (OFICINA DE GERENCIA Y PRESUPUESTO) as follows:

LIV. MEMORANDUM NO. 2021-029; CIRCULAR LETTER NO. 013-2021 OF THE OFFICE OF THE CHIEF OF STAFF OF THE GOVERNOR (SECRETARÍA DE LA GOBERNACIÓN) & THE OFFICE OF MANAGEMENT AND BUDGET (OFICINA DE GERENCIA Y PRESUPUESTO):

A. The PRDOH certifies that the CONTRACTOR was selected as the provider of the services described in this Agreement, pursuant to Executive Order No. 2021-029.

B. The Parties certify that they acknowledge the provisions stated in Executive Order No. 2021-029 and CC 013-2021. Any failure to comply with the requirements set forth in Executive Order No. 2021-029 and CC 013-2021 will result in the termination of this Agreement.

C. The CONTRACTOR certifies that it has informed PRDOH of any current contractual relationship with any government entities of the Government of Puerto Rico. Accordingly, the CONTRACTOR certifies, as of the date hereof, that it does not have a contractual relationship with any entity of the Government of Puerto Rico, other than the PRDOH. The CONTRACTOR also certifies that said entities are all the entities of the Government of Puerto Rico with which they maintain a contractual relationship. In addition, the CONTRACTOR recognizes and accepts that omitting any information regarding any current contractual relationship with any governmental entity could result in the termination of this agreement if so, required by PRDOH.

D. The CONTRACTOR certifies that it has informed the PRDOH whether or not the entity is a public corporation whose shares are exchanged in a stock exchange properly regulated. In the event that the CONTRACTOR certifies that it is not a public corporation that exchanges shares in a stock change, the CONTRACTOR certifies it has completed the applicable certification as stated in CC-013-2021.

D. **Attachment H** (Contractor Certification) is being replaced by a modified **Attachment H** (Contractor Certification) hereto incorporated by reference into the Agreement (See **Attachment I** of this **Amendment D**).

E. **Attachment I** (Non-Conflict of Interest Certification) is being replaced by a modified **Attachment I** (Non-Conflict of Interest Certification) hereto incorporated by reference into the Agreement (See **Attachment II** of this **Amendment D**).

V. HEADINGS

The titles of 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.

VI. 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,

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as amended, the policies and procedures promulgated under the CDBG-DR Programs, and any other applicable laws. Further, the CONTRACTOR acknowledges that all funds are subject to recapture and repayment for non-compliance.

VII. 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.

VIII. 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.

IX. 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 thereto. 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.

X. 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.

XI. SEVERABILITY

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

XII. COUNTERPARTS

This Amendment may be executed in any number of counterparts, each of which 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.

XIII. SURVIVAL OF TERMS AND CONDITIONS

The terms and conditions of this Amendment related to the following subjects shall survive the termination or expiration of this Amendment: 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;

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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 Amendment shall so survive.

XIV. COMPLIANCE WITH THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO (FOMB) POLICY: REVIEW OF CONTRACTS, AS MODIFIED ON APRIL 30, 2021, REGARDING PROFESSIONAL SERVICES

The FOMB Policy requires that all agreements that contemplate recurring professional services that may be performed by appropriately trained government staff include a provision of compliance with the adequate transfer of skills and technical knowledge to the pertinent public sector personnel. This requirement shall not apply to contracts that contemplate non-recurring professional services or specialized professional services that may not be performed by existing staff at the applicable governmental entity, including because of independence requirements.

Accordingly, given that the agreements under CDBG-DR are non-recurring professional services or specialized professional services, the PRDOH certifies that the transfer of skills and technical knowledge required by the Certified Fiscal Plan is inapplicable given the non-recurring or specialized nature of the contracted services.

As mentioned before, HUD allocated funds for disaster recovery assistance to the Government of Puerto Rico under the CDBG-DR Program. These funds are intended to provide financial assistance to address unmet needs that arise and that are not covered by other sources of financial aid. In addition, with these allocations of funding under the Grant Agreement, the PRDOH will conduct a comprehensive recovery to benefit the residents of Puerto Rico.

XV. COMPLIANCE WITH THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO (FOMB) POLICY, REVIEW OF CONTRACTS

As part of the PRDOH contract process, and pursuant to Section 204(b)(2) of the "Puerto Rico Oversight, Management, and Economic Stability Act," 48 U.S.C. §2101, *et seq.*, also known as "PROMESA", the Financial Oversight and Management Board for Puerto Rico (**FOMB**) require approval of certain contracts and amendments to assure that they "promote market competition" and "are not inconsistent with the approved fiscal plan." For the approval process, the FOMB requests, among other information, the Contractor Certification Requirement for its evaluation.

In compliance with the above, the CONTRACTOR represents and warrants that the information included in the Contractor Certification Requirement is complete, accurate and correct, and that any misrepresentation, inaccuracy or falseness in such Certification will render the contract null and void and the CONTRACTOR will have the obligation to reimburse immediately to the Commonwealth any amounts, payments or benefits received from the Commonwealth under the proposed Amendment and original Agreement.

SIGNATURES ON THE FOLLOWING PAGE

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

PUERTO RICO DEPARTMENT OF HOUSING

TIDAL BASIN CARIBE, LLC

William O. Rodríguez Rodríguez
William O. Rodríguez Rodríguez (Aug 31, 2023 11:17 EDT)
William O. Rodríguez Rodríguez, Esq.
Secretary


Esrone McDaniels
Chief Operating Officer

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Attachment H
APPENDIX C
CONTRACTOR CERTIFICATION
FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO
CONTRACTS REVIEW POLICY

Tidal Basin Caribe, LLC

The following is hereby certified to the Oversight Board regarding the request for authorization for **Case Manager Services** contract amendment by and between the **Puerto Rico Department of Housing** and **Tidal Basin Caribe, LLC**:

1. The expected subcontractor(s) in connection with the proposed contract¹ is (are) the following:

a. **Name of individual or firm, including names of principals and principal stakeholders.**

Tidal Basin Caribe currently does not have any subcontractors working on this project. All personnel are Tidal Basin Caribe employees.

b. **Principal terms and conditions of the contractual relation and role of the subcontractor**

Not Applicable

c. **Amount of proposed contract payable to each subcontractor**

Not Applicable

2. Neither the contractor nor any of its owners², partners, directors, officials, or employees, has agreed to share or give a percentage of the contractor's compensation under the contract to, or otherwise compensate, any third party, whether directly or indirectly, in connection with the procurement, negotiation, execution or performance of the contract, except as follows:

a. **Name of individual or firm, including names of principals or owners of the latter**

Not Applicable

b. **Principal terms and conditions of the compensation sharing arrangement**

Not Applicable

3. To the best knowledge of the signatory (after due investigation), no person has unduly intervened in the procurement, negotiation or execution of the contract, for its own benefit or that of a third person, in contravention of applicable law.

¹ As used herein, the term "contract" is inclusive of any amendments, modifications or extensions.

² For purposes of this certification, a contractor's "owner" shall mean any person or entity with more than a ten percent (10%) ownership interest in the contractor.

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4. To the best knowledge of the signatory (after due investigation), no person has: (i) offered, paid, or promised to pay money to; (ii) offered, given, or promised to give anything of value to; or (iii) otherwise influenced any public official or employee with the purpose of securing any advantages, privileges or favors for the benefit of such person in connection with the contract (such as the execution of a subcontract with contractor, beneficial treatment under the contract, or the written or unwritten promise of a gift, favor, or other monetary or non-monetary benefit).

5. Neither the contractor, nor any of its owners, partners, directors, officials or employees or, to the best of its knowledge (after due investigation), its representatives or sub-contractors, has required, directly or indirectly, from third persons to take any action with the purpose of influencing any public official or employee in connection with the procurement, negotiation or execution of the contract, in contravention of applicable law.

6. Any incorrect, incomplete or false statement made by the contractor's representative as part of this certification shall cause the nullity of the proposed contract, and the contractor must reimburse immediately to the Commonwealth any amounts, payments, or benefits received from the Commonwealth under the proposed contract.

[The above certifications shall be signed under penalty of perjury by the Chief Executive Officer (or equivalent highest rank officer) in the following form:]

I hereby certify under penalty of perjury that the foregoing is complete, true, and correct on this **27th** day of **June** of **2023**.



Signature

June 27, 2023

Date

Esrone McDaniels

Printed Name

Chief Operating Officer

Position

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ATTACHMENT I
NON-CONFLICT OF INTEREST CERTIFICATION
TIDAL BASIN CARIBE, LLC

The CONTRACTOR certifies that:

1. No public servant of this executive agency has a pecuniary interest in this contract, subrecipient agreement, purchase, or commercial transaction.
2. No public servant of this executive agency has requested me or accepted from me, directly or indirectly, for him (her), for any member of his family unit or for any person, gifts, bonuses, favors, services, donations, loans or anything else of monetary value.
3. No public servant (s) requested or accepted any good of economic value, linked to this transaction, from any person of my entity as payment for performing the duties and responsibilities of their employment.
4. No public servant has requested from me, directly or indirectly, for him (her), for any member of his or her family unit, or for any other person, business, or entity, something of economic value, including gifts, loans, promises, favors or services in exchange for the performance of said public servant is influenced in my favor or of my entity.
5. I have no kinship relationship, within the fourth degree of consanguinity and second by affinity, with any public servant who has the power to influence and participate in the institutional decisions of this executive agency.

"I hereby certify under penalty of perjury that the foregoing is complete, true, and correct."



Signature

Esrone McDaniels

Printed Name

June 27, 2023

Date

Chief Operating Officer

Position











TIDAL BASIN AMENDMENT D

Final Audit Report

2023-08-31

Created:	2023-08-25
By:	Christian Rios Vallejo (crios@vivienda.pr.gov)
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"TIDAL BASIN AMENDMENT D" History

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-  Signer w.rodriguez@vivienda.pr.gov entered name at signing as William O. Rodríguez Rodríguez
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-  Document e-signed by William O. Rodríguez Rodríguez (w.rodriguez@vivienda.pr.gov)
Signature Date: 2023-08-31 - 3:17:22 PM GMT - Time Source: server
-  Agreement completed.
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