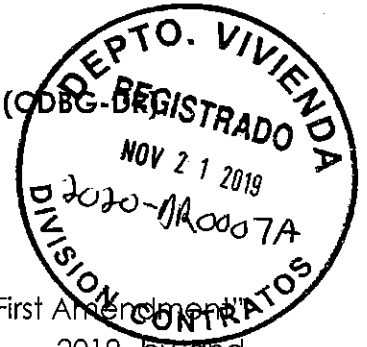




GOVERNMENT OF PUERTO RICO
Department of Housing

Amendment A

COMMUNITY DEVELOPMENT BLOCK GRANT – DISASTER RECOVERY (CDBG-DR)
AMENDMENT A TO
AGREEMENT FOR JANITORIAL SERVICES
Contract No. 2020-DR0007



This **AMENDMENT A TO THE AGREEMENT FOR JANITORIAL SERVICES** (this "First Amendment" or "Amendment"), is entered into as of the 21 day of November, 2019, by and between the **PUERTO RICO DEPARTMENT OF HOUSING** ("PRDOH"), a public agency and instrumentality of the Government of Puerto Rico, created under Act No. 97, dated June 10, 1972, as amended, the Department of Housing Organic Act ("Organic Act"), with principal offices at 606 Barbosa Ave., San Juan, Puerto Rico, represented herein by its Secretary, Hon. Fernando A. Gil-Enseñat, of legal age, attorney, married, and resident of Guaynabo, Puerto Rico; and **ACTION SERVICE CORPORATION**, (hereinafter the "Contractor"), with principal offices in Barrio Monacillo, Carr. 8838 KM 1.7, Edificio 1700 San Juan, Puerto Rico 00936, herein represented by José M. García Ramis, in his capacity as CEO, of legal age, married, and resident of San Juan, Puerto Rico duly authorized by Resolution by the CONTRACTOR.

RECITALS

WHEREAS, the PRDOH and the Contractor entered into an Agreement, which was registered under Contract No. 2020-DR0007, for the performance of janitorial services in connection with the CDBG-DR Program (the "Agreement").

WHEREAS, the PRDOH will pay the Contractor for allowable Janitorial Services performed during the term of the Agreement a maximum amount not to exceed **FIFTY FIVE THOUSAND SIX HUNDRED AND EIGHTY FOUR DOLLARS AND EIGHTY CENTS (\$55,684.80)**; **Account Number: R01A01ADM-DOH-NA 4439-01-000**

WHEREAS, the Agreement shall be in effect and enforceable between the parties from the date of its execution. The term of the Agreement will be for a performance period of **twelve (12) months**, ending in July 16, 2020.

WHEREAS, the parties wish to amend the Agreement and become subject to the terms of the Agreement and this First Amendment.

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 acknowledge, the parties hereby agree as follows:

I. AMENDEMENTS

A. The parties agree to amend Section II. Term of Agreement to replace paragraph C as follows:

C. The term of this Agreement shall not exceed a period of **five (5) years**, including options for renewal or extension. Likewise, the term of this Agreement cannot exceed the lifetime of the initial Grant Agreement, unless the term of the initial Grant Agreement is extended by HUD.

B. The parties agree to amend Section IV. COMPENSATION AND PAYMENT to add new paragraphs H and I and renumber paragraph H as paragraph J:

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H. 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.


I. The CONTRACTOR acknowledges and agrees to repay any CDBG-DR funds used for ineligible costs.

- C. The parties agree to amend Section VII. OWNERSHIP AND USE OF DOCUMENTS, to replace the second sentence of paragraph B with the following sentence:

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 agree to amend Section XI PENALTIES AND LIQUIDATED DAMAGES to add a new paragraph 3 as follows:

3. Liquidated damages. The Contractor shall pay to PRDOH as liquidated damages, **two hundred dollars (\$200.00) for each calendar day that to services requested by the PRDOH are late until deemed in compliance subject to a maximum of four thousand dollars (\$4,000.00)** established in the **Attachment B: Scope of Service**, of the original Agreement between PRDOH and the Contractor. Said sum, in view of the difficulty of accurately ascertaining the loss which PRDOH will suffer by reason of delay in the completion of the Work hereunder, is hereby fixed and agreed as the liquidated damages that PRDOH will suffer by reason of such delay. Liquidated damages received hereunder are not intended to be nor shall they be treated as either a partial or full waiver or discharge of the PRDOH's right to indemnification, or the Contractor's obligation to indemnify the PRDOH pursuant to this Contract, or to any other remedy provided for in this Contract or by Law. Liquidated damages may be assessed at the sole discretion of PRDOH. For the purpose of applying and calculating such liquidated damages, a grace period of ten (10) days shall be observed. The PRDOH may deduct and retain out of the monies which may become due hereunder, the amount of any such liquidated damages; and in case the amount which may become due hereunder shall be less than the amount of liquidated damages due to the PRDOH per the formula above, the Contractor shall be liable to pay the difference.

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- E. The parties agree to replace Section 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).

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- 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.
- F. The parties agree to add a new Section XLVII. PERFORMANCE WARRANTY:

XLVII. 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; 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;
 - 3. pay liquidated damages for any past due Deliverable; and
 - 4. take necessary action to ensure that future performance and Deliverables meet specifications and conform to the Contract.

G. All other terms and conditions of the Agreement remain unchanged.

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

II. CONSOLIDATIONS, MERGERS, OR DISSOLUTION

In the event that Contractor is 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, the Contractor must ensure that the resulting entity becomes responsible for Contractor's tasks under the Agreement, as amended. A timeframe of no more than

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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 the Agreement, as amended, 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 in Exhibits attached to the original Agreement. Contractor is to 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 the Agreement, as amended, and make the survival or transfer of those tasks a condition to any merger, consolidation, or dissolution involving Contractor during the time span of the Agreement, as amended.

III. 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.

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

V. 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.

VI. OVERPAYMENT

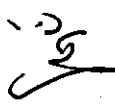
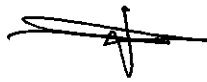
CONTRACTOR shall be liable to the PRDOH for any costs disallowed pursuant to financial and/or compliance audit(s) of funds received under the Agreement, as amended. CONTRACTOR shall reimburse such disallowed costs from funds other than those CONTRACTOR received under the Agreement, as amended.

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 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.

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 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.

XII. 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.

XIII. 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 hereto executive this Amendment A in San Juan, Puerto Rico, on the above written date.

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DEPARTMENT OF HOUSING

ACTION SERVICE CORPORATION



Hon. Fernando A. Gil-Enseñat
Secretary



José M. García Ramis
CEO
DUNS Number: 049510324