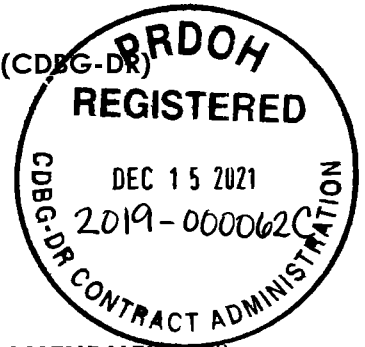




AMENDMENT C

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

**AMENDMENT C TO THE SUBRECIPIENT AGREEMENT
BETWEEN THE
PUERTO RICO DEPARTMENT OF HOUSING
AND THE
PUERTO RICO HOUSING FINANCE AUTHORITY**



This **AMENDMENT C TO THE SUBRECIPIENT AGREEMENT** (hereinafter, the "**AMENDMENT C**") is entered into this 15 day of December, 2021, 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 LPRA § 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, Hon. William O. Rodríguez Rodríguez, of legal age, attorney, single, and resident of San Juan, Puerto Rico; and the **Puerto Rico Housing Finance Authority** (the "**Subrecipient or PRFHA**"), a public agency created under Act. 103, of August 11, 2001, as amended, 7 LPRA § 924 et seq, known as the "Puerto Rico Finance Authority Act", with principal offices at 638 Aldebarán St., Urb. Altamira, San Juan, Puerto Rico, 00920, represented herein by its Executive Director, Blanca P. Fernández-González, of legal age, married, and resident of San Juan, Puerto Rico, collectively the "Parties".

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I. RECITALS AND GENERAL AWARD INFORMATION

WHEREAS, on November 29, 2018, the PRDOH and the Subrecipient executed a Subrecipient Agreement, Contract Number 2019-000062, to undertake the CDBG-DR LIHTC Program, for a term of **thirty-six (36) months** from the day of its execution, ending on November 29, 2021, where the PRDOH would pay a maximum amount not to exceed one **hundred million dollars (\$100,000,000)**.

WHEREAS, on September 18, 2019, the PRDOH and the Subrecipient executed an Amendment A to the Agreement, Contract Number (2019-000062A), (hereinafter, "Amendment A").

WHEREAS, on September 30, 2021 the PRDOH and the Subrecipient executed an Amendment B to the Agreement, Contract Number (2019-000062B), (hereinafter, "Amendment B"). In this Amendment B, the Agreement term was amended, ending now on November 29, 2023.

WHEREAS, as per **Section VIII (A)** 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, its is the intention of the parties to conform the Subrecipient Agreement, as amended, to the LIHTC Program Guidelines and Programmatic Requirements.

WHEREAS, this **AMENDMENT C** does not 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, including any modified Exhibits.

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**.

NOW THEREFORE, in consideration of the mutual promises and the terms and conditions set forth herein, the PRDOH and the Subrecipient agree to execute this **AMENDMENT C** subject to the following:

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**.

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B. AMENDMENTS

a. The following Exhibit is being replaced by a modified Exhibit:

- i. **Exhibit H** (Subrogation and Assignment Provisions) of the Agreement is being replaced by a modified **Exhibit H** (Subrogation and Assignment Provisions) hereto incorporated by reference into the Agreement. (See **Attachment I**).

III. SEVERABILITY

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

IV. SECTION HEADINGS AND SUBHEADINGS

The section headings and subheadings contained in this **AMENDMENT C** are included for convenience only and shall not limit or otherwise affect the terms of the Agreement, and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this **AMENDMENT C**.

V. 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.

VI. ENTIRE AGREEMENT

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

VII. 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 Subrecipient acknowledges that all funds are subject to recapture and repayment for non-compliance.

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, CDBG-DR
Grantee**

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By: William O. Rodríguez Rodríguez
William O. Rodríguez Rodríguez (Dec 15, 2021 12:58 AST)

Name: Hon. William O. Rodríguez Rodríguez, Esq.

Title: Secretary

DUNS Number: 125967484

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Subrecipient

By: Blanca Fernandez
Blanca Fernandez (Dec 10, 2021 15:47 AST)

Name: Blanca P. Fernández-González

Title: Executive Director

DUNS Number: 090591801



EXHIBIT H

SUBROGATION AND ASSIGNMENT PROVISIONS

CDBG-DR GAP TO LOW-INCOME HOUSING TAX CREDITS PROGRAM

PUERTO RICO HOUSING FINANCE AUTHORITY

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1. General Provisions

a) The Parties acknowledge that the following provisions of this Exhibit are hereto incorporated by reference and made an integral part of the aforementioned Subrecipient Agreement as **Exhibit H**.

b) Changes in the provisions of this Exhibit will require an amendment to the Subrecipient Agreement. Such amendment would result in the incorporation by reference of a modified **Exhibit H** to the Subrecipient Agreement.

2. Subrogation and Assignment Relating to Funds Received from the Puerto Rico Department of Housing CDBG-DR Gap to Low-Income Housing Tax Credits Program.

a) These provisions are incorporated into the Subrecipient Agreement in consideration of the commitment by PRDOH to evaluate Subrecipient's application for the award of disaster assistance funds (the "**Application**") or the Subrecipient's receipt of CDBG-DR disaster recovery funds (the "**Grant Proceeds**") under the Program being administered by PRDOH.

b) Subrecipient understands and acknowledges that the Program is subject to the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. §§ 5121-5207 (the "**Act**") and that, under such Act, the Subrecipient may only receive assistance to the extent that the Subrecipient has a disaster recovery need that is not fully met by insurance or other forms of disaster assistance. Subrecipient further acknowledges that these provisions are intended to ensure that Subrecipient does not receive duplicate benefits available to the Subrecipient from another source, for the same purposes as the Grant Proceeds provided under the Program, and that, any assistance determined to be duplicative must be deducted from the Program's calculation of the Subrecipient's total need prior to awarding assistance.

c) Subrecipient hereby subrogates and assigns to PRDOH any and all of Subrecipient's future rights to, and any interest Subrecipient may have in, any reimbursement and all payments received or subsequently received from any grant, loan, insurance policy or policies of any type (each individually, a "**Policy**" and collectively, the "**Policies**"), or under any subsidy, reimbursement or relief program related to or administered by the Federal Emergency Management Agency ("**FEMA**"), insurance payments, or any other federal, state or local government agency (each, individually, a "**Disaster Program**" and collectively, the "**Disaster Programs**") to the extent of all Grant Proceeds paid or to be paid under the Program and that are determined, in the sole discretion of PRDOH or its designated agent, to be a duplication of benefits ("**DOB**"). Any payments referred to in this paragraph, whether they are from Policies, FEMA, or any other source, and whether or not such amounts are a DOB, shall be referred to herein as "**Proceeds**," and any Proceeds that are determined to be a DOB shall be referred to herein as "**DOB Proceeds**."

d) Subrecipient agrees that, in the event that Subrecipient receives additional Proceeds related to disaster recovery that are not listed on the Duplication of Benefits Certification submitted in connection with the Application, Subrecipient will notify the PRDOH within **ten (10) working days** of receipt of the funds by sending a written notification to Otrossi@vivienda.pr.gov. PRDOH will, in turn determine, in its sole discretion, if such Proceeds constitute DOB Proceeds. If any of the Proceeds are determined to be DOB Proceeds, the Subrecipient shall pay PRDOH the DOB Proceeds, to be disbursed as provided in Section 3 of this Agreement.

3. Cooperation and Further Documentation.

a) If PRDOH elects to pursue any of the claims Subrecipient has or may have under any Policies, Subrecipient agrees to assist and cooperate with PRDOH. Subrecipient's assistance and cooperation shall include, but shall not be limited to, allowing suit to be brought in Subrecipient's name(s) and providing any additional documentation with respect to such consent, giving depositions, providing documents, producing records and other evidence, testifying at trial, and any other form of assistance and cooperation reasonably requested by the PRDOH. Subrecipient also agrees to assist and cooperate in the attainment and collection of any DOB Proceeds that the Subrecipient would be entitled to under any applicable Disaster Program.

b) If requested by PRDOH, Subrecipient agrees to execute such further and additional documents and instruments as may be requested to further and better subrogate and assign to PRDOH (to the extent of the Grant Proceeds paid to Subrecipient under the Program) the Policies, any amounts received under the Disaster Programs that are determined to be DOB Proceeds and/or any rights thereunder. Subrecipient further agrees to take, or cause to be taken, all actions and to do, or cause to be done, all things requested by the PRDOH to consummate and make effective the purposes of this Subrogation Agreement.

c) Subrecipient expressly allows and authorizes PRDOH to request information from any company with which Subrecipient holds or held any insurance policy or policies of any type, any other company or entity -public or private- from which the Subrecipient has applied for or is receiving assistance (such as FEMA, or others), or any non-public or confidential information determined by PRDOH, in its sole discretion, to be reasonably necessary to monitor/enforce its interest in the rights subrogated and assigned to it under this Agreement, and grant consent to such company or entity to release said information to the PRDOH.

4. Agreement to Turn Over Proceeds; Future Reassignment.

a) If Subrecipient (or, to the extent permitted by superior loan documents, any lender to which DOB Proceeds are payable) hereafter receives any DOB Proceeds, Subrecipient agrees to promptly pay such amounts to PRDOH, if Subrecipient received Grant Proceeds under the Program in an amount greater than the amount Subrecipient would have received if such DOB Proceeds had been considered in the calculation of Subrecipient's award.

b) In the event that Subrecipient receives or is scheduled to receive any Proceeds not listed on its Duplication of Benefits Certification ("**Subsequent Proceeds**"), Subrecipient shall pay such Subsequent Proceeds directly to the PRDOH, and PRDOH will determine the amount, if any, of such Subsequent Proceeds that are DOB Proceeds ("**Subsequent DOB Proceeds**"). Subsequent Proceeds shall be disbursed as follows:

- (i) If Subrecipient has received full payment of the Grant Proceeds, Subrecipient shall remit any Subsequent DOB Proceeds to PRDOH. PRDOH shall return to the Subrecipient any Subsequent Proceeds in excess of the Subsequent DOB Proceeds.

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- (ii) If Subrecipient has received no payment of the Grant Proceeds, PRDOH shall reduce the payment of the Grant Proceeds to Subrecipient by the amount of the Subsequent DOB Proceeds and shall return all Subsequent Proceeds in excess of the Subsequent DOB Proceeds to Subrecipient.
- (iii) If Subrecipient has received a portion of the Grant Proceeds, the following shall occur: (A) PRDOH shall reduce the remaining payments of the Grant Proceeds and return Subsequent DOB Proceeds in such amount to the Subrecipient; and (B) Subrecipient shall remit any remaining Subsequent DOB Proceeds to PRDOH. PRDOH shall also return to the Subrecipient any Subsequent Proceeds in excess of the Subsequent DOB Proceeds.
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- (iv) If the PRDOH makes the determination that Subrecipient does not qualify to participate in the Program or Subrecipient decides not to participate in the Program, PRDOH shall return the Subsequent Proceeds to Subrecipient, and the Agreement shall terminate.

c) Once PRDOH has recovered an amount equal to the Grant Proceeds paid to Subrecipient, PRDOH will reassign to Subrecipient any rights given to PRDOH pursuant to this Subrogation Agreement.

5. Miscellaneous.

a) Subrecipient hereby represents that all statements and representations made by Subrecipient regarding any Proceeds are true and correct, as of the date of the issuance of the Grant Proceeds.

b) In any proceeding to enforce these provisions, PRDOH shall be entitled to recover all costs of enforcement, including PRDOH's attorney fees.

c) The parties hereto each waive the right to have any judicial proceeding concerning any of the provisions hereof tried by a jury.

d) Neither these provisions nor any portion or provisions hereof may be changed, waived or terminated orally or by any course of dealing, or in any manner other than by an agreement in writing, signed by all parties hereto and approved by PRDOH.

e) This Subrogation and the rights and obligations of the parties shall be governed and construed in accordance with federal law and the laws of the Government of Puerto Rico without giving effect to conflict of law provisions. Any action arising out of or related to this Subrogation shall be brought within the Government of Puerto Rico.

f) The captions of the various sections of this Subrogation have been inserted only for the purpose of convenience; such captions are not a part of the Agreement and shall not be deemed in any manner to modify, explain, enlarge or restrict any provisions of this Subrogation.

g) Subrecipient acknowledges that making a false, fictitious, or fraudulent statement or representation in this agreement is punishable under State and Federal law (18 U.S.C. 287, 1001 and 31 U.S.C. 3729), and shall constitute a separate criminal offense each time a public benefit is fraudulently received.

h) Subrecipient acknowledges that they have been informed and understand the penalties for making a materially false or misleading statement to obtain CDBG-DR funds under the Program or any other of the PRDOH's programs.

END OF DOCUMENT









AMENDMENT C PRHFA

Final Audit Report

2021-12-15

Created:	2021-12-09
By:	Radames Comas Segarra (rcomas@vivienda.pr.gov)
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Transaction ID:	CBJCHBCAABAAMOCUvwolizDtnkAMILLC5KrXX4O_avTo

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