



COMMUNITY DEVELOPMENT BLOCK GRANT – DISASTER RECOVERY (CDBG-DR)
MUNICIPAL RECOVERY PLANNING PROGRAM (MRP)

AMENDMENT C TO THE SUBRECIPIENT AGREEMENT
BETWEEN THE
PUERTO RICO DEPARTMENT OF HOUSING
AND THE
MUNICIPALITY OF PONCE
Contract No. 2022-DR0235
Amendment No. 2022-DR0235C



This **AMENDMENT C TO THE SUBRECIPIENT AGREEMENT** ("**AMENDMENT C**") is entered into this 25 day of May, 2023, by and between the **PUERTO RICO DEPARTMENT OF HOUSING** ("**PRDOH**"), a public agency of the Government of Puerto Rico 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 Organic Act**" ("**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 **Municipality of Ponce** ("**Subrecipient**"), a local government legal entity, with principal offices at Ponce, Puerto Rico, represented herein by its Mayor, Luis M. Irizarry Pabón, of legal age, married, and resident of Ponce, Puerto Rico; collectively the "**Parties**".

I. RECITALS AND GENERAL AWARD INFORMATION

WHEREAS, on December 15th, 2021, the Parties executed a Subrecipient Agreement, Contract Number **2022-DR0235** ("**Agreement**"), for **EIGHT HUNDRED EIGHTY-SIX THOUSAND FIVE HUNDRED FIFTY-TWO DOLLARS (\$886,552.00)** for the Subrecipient to undertake its activities under the **Municipal Recovery Planning Program** ("**Program**"). The Parties agreed on a performance period of **twelve (12) months** from the day of the execution of the Agreement, ending on **December 15th, 2022**.

WHEREAS, on August 4th, 2022, the Parties executed an **Amendment A** to the Agreement, Contract Number **2022-DR0235A** ("**Amendment A**"). Via **Amendment A**, the total amount of the Agreement increased by **ONE HUNDRED TWENTY-EIGHT THOUSAND EIGHT HUNDRED SEVENTY-THREE DOLLARS AND TWENTY-EIGHT CENTS (\$128,873.28)** for an adjusted total amount of **ONE MILLION FIFTEEN THOUSAND FOUR HUNDRED TWENTY-FIVE DOLLARS AND TWENTY-EIGHT CENTS (\$1,015,425.28)** for the Subrecipient to continue undertaking its planning activities under the Municipal Recovery Planning Program. Moreover, the term of the Agreement remained unaltered. Modified versions of **Exhibit D** (Budget) and **Exhibit G** (Subrogation and Assignment Provisions) were incorporated by reference into the Agreement via **Amendment A**. A modified version of the Funds Certification, identified as **Exhibit E-I**, was also incorporated into the Agreement.

WHEREAS, on November 1, 2022, the Parties executed an **Amendment B** to the Agreement, Contract Number **2022-DR0235B** ("**Amendment B**"). Via **Amendment B**, the **PERIOD OF PERFORMANCE** and **END DATE** of the Agreement were extended for an additional period of **six (6) months**, resulting in a new performance period of **eighteen (18) months** from the date of the execution of the Agreement ending on **June 15th, 2023**. Modifications to **Exhibit D** (Budget) and **Exhibit F** (HUD General Provisions and Other Federal Statutes, Regulations, and PRDOH Requirements). A new exhibit, **Exhibit I** (Non-Conflict of Interest Certification), was incorporated into the Agreement as well. The total

authorized budget allocated and the end date of the Agreement remained unchanged.

WHEREAS, as per Section IX (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, this **AMENDMENT C** does not constitute an extinctive novation of the obligations of the Parties under the Agreement.

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 Subrecipient has the legal power and authority to enter into this **AMENDMENT C** with the PRDOH, in accordance with Article 1.008(q) of Act No. 107 of August 14, 2020, also known as the "Puerto Rico Municipal Code", 21 L.P.R.A. § 7013(q); and by signing this **AMENDMENT C**, the Subrecipient assures the PRDOH that it shall comply with all the requirements described herein.

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, as established in the following sections B and C of this **AMENDMENT C**. All other provisions of the original Agreement, including its exhibits, shall continue to be in full force and effect.

B. SCOPE OF THE AMENDMENT

The goal of the Program is for the Municipalities to envision a potential future and develop a plan for recovery and resilience for all populations within their Municipality. In order to achieve the Program goals, the Parties acknowledge and agree that it is necessary to extend the **PERIOD OF PERFORMANCE** and **END DATE** of the Agreement for an additional period of **six (6) months**, for a new performance period of **twenty-four (24) months** from the date of the execution of the Agreement ending on **December 15th, 2023**. Modifications to the **General Award Information** table in **Section I** of the Agreement and changes to **Section V. EFFECTIVE DATE AND TERM** of the Agreement are being incorporated via this **AMENDMENT C** to accommodate the aforementioned modification.

Moreover, **Section XIII. FORCE MAJEURE** is being amended and **Section XXXII. LIMITATIONS PENDING ENVIRONMENTAL CLEARANCE** is being added to the Agreement.

As stated before, all other provisions of the original Agreement, including the total authorized budget, remain unaltered.

C. AMENDMENTS

- a. The Parties agree to amend the **GENERAL AWARD INFORMATION** table in **Section I** of the Agreement as follows:

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CDBG-DR Grantee Federal Award Identification Number:	B-17-DM-72-0001
CDBG-DR Grantee Federal Award Date:	September 20, 2018
CDBG-DR Grantee Unique Identifier:	Unique Entity ID: FFMUBT6WCM1
Federal Award project description:	See Exhibit A ("Scope of Work")
Subrecipient Contact Information:	Luis M. Irizarry Pabón Mayor Municipality of Ponce PO Box 1709 Ponce, PR 00733-1709 787-448-3806 luis.irizarry@ponce.pr.gov
Subrecipient Unique Identifier:	Unique Entity ID #: JLHWBJJK69Y8
Subaward Period of Performance:	Start Date: Effective Date, as defined in Section V of the Agreement, as amended. End Date: December 15th, 2023
Funds Certification:	Dated: December 13, 2021 Authorized Amount: \$886,552.00 Funds Allocation: CDBG-DR "r01p06mrp-doh-na" Account Number: 6090-01-000 See Exhibit E ("Funds Certification") Dated: May 16, 2022 Authorized Amount: \$128,873.28 Funds Allocation: CDBG-DR "r01p06mrp-doh-na" Account Number: 6090-01-000 See Exhibit E-I ("Funds Certification")

b. **Section V. EFFECTIVE DATE AND TERM** of the Agreement is being amended as follows:

*This Agreement shall be in effect and enforceable between the parties from the date of its execution. The performance period of this Agreement is a maximum of **twenty-four (24) months** from the date of its execution, ending on **December 15, 2023**.*

*The MRP Program will occur as two (2) consecutive components to identify projects and actions necessary for holistic recovery from Hurricanes Irma and María: Individual Municipal Planning and Regional Municipal Planning. This Agreement only pertains to Individual Municipal Planning. This Individual Municipal Planning process will have a Pre-Program Activity Period which will last a maximum of six (6) months and will comprise activities depending on the procurement option chosen by the Subrecipient. These activities may include but are not limited to independent procurement, mobilization, staff buildup, and launch. Individual Municipal planning-specific activities must be submitted to PRDOH within six (6) months of the planning start date. After the six (6) month Individual Planning Activity period, PRDOH will conduct a final review of the Individual Municipal Plans. Hence, the entire Individual Municipal Planning process will have a maximum term of **twenty-four (24) months**. More details may be found in Exhibit A ("Scope of Work") and Exhibit B ("Timelines and Performance Goals").*

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The End of Term shall be the later of (i) **December 15, 2023**; (ii) the date as of which the Parties agree in writing that all Close-Out Requirements¹ have been satisfied or, where no Close-Out Requirements apply to this Agreement, the date as of which the Parties agree in writing that no Close-Out Requirements are applicable hereto; or (iii) such later date as the Parties may agree to in a signed amendment to this Agreement.

[...]

- c. The Parties agree to amend **Section XIII. FORCE MAJEURE** as follows:

In the event of a fire, flood, earthquake, natural disaster, hurricane, riot, act of governmental authority in its sovereign capacity, pandemic officially declared by the Government of Puerto Rico, strike, labor dispute or unrest, embargo, war, insurrection or civil unrest, any Force Majeure including inclement weather, herein collectively referred to as Force Majeure during the term of this Agreement, neither the PRDOH nor the Contractor or Subrecipient shall be liable to the other party for nonperformance during the conditions created by such event. The party claiming Force Majeure shall exercise due diligence to prevent, eliminate, or overcome such Force Majeure event where it is possible to do so and shall resume performance at the earliest possible date.

The Contractor or Subrecipient shall notify the PRDOH in writing as soon as possible, but in any event within ten (10) business days of the occurrence of the Force Majeure event and describe in reasonable detail the nature of the Force Majeure event, how the non-performance or delay relates to or arises from the Force Majeure event, its anticipated duration and any action taken to minimize its effect. The Contractor or Subrecipient may be entitled to reasonable adjustments in schedule, among other measures, in the foregoing circumstances. If non-performance continues for more than thirty (30) days, without reasonable justification, the PRDOH may terminate this Agreement immediately upon written notification to the Contractor or Subrecipient.

- d. The Parties agree to add **Section XXXII. LIMITATIONS PENDING ENVIRONMENTAL CLEARANCE** as follows:

The Subrecipient does not have a legal claim to any amount of CDBG funds to be used for the specific project or site until the environmental review process is satisfactorily completed. As such, the Subrecipient acknowledges that it has no legal claim to any amount of CDBG funds for any projects or site acquisition under this

¹ "Close-Out Requirements" means all requirements to be satisfied by each party in order to close-out this Agreement and the CDBG-DR funds provided herein in accordance with applicable Requirements of Law, including the execution and delivery by one or more of the Parties of all close-out agreements or other legal instruments and the taking of any actions by one or more of the Parties in connection with such close-out, in any case as required under applicable Requirements of Law.

*Agreement, until the environmental review process is completed under PRDOH's satisfaction. The Subrecipient acknowledges that it will not begin any actions related to the project or site until the environmental review process is completed and has written acceptance and a **Notice to Proceed** from PRDOH.*

III. SEVERABILITY

If any provision of this **AMENDMENT C** is held invalid, the remainder of **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 thereto. 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, under 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 concerning 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.

VIII. NON-CONFLICT OF INTEREST CERTIFICATION

The Subrecipient reassures PRDOH its willingness to comply with the applicable conflict of interest policies by signing the Non-Conflict of Interest Certification incorporated by reference into the Agreement via this **AMENDMENT C**. (See Attachment I).

[SIGNATURES ON THE FOLLOWING PAGE.]

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

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**PUERTO RICO DEPARTMENT OF HOUSING
CDBG-DR Grantee**

By: William O. Rodríguez Rodríguez
William O. Rodríguez Rodríguez (May 25, 2023 16:27 EDT)

Name: William O. Rodríguez Rodríguez

Title: Secretary

MUNICIPALITY OF PONCE

Subrecipient

By: Luis M. Irizarry Pabón
Luis M. Irizarry Pabón (May 24, 2023 13:40 EDT)

Name: Luis M. Irizarry Pabón

Title: Mayor



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ATTACHMENT I

MUNICIPAL RECOVERY PLANNING PROGRAM

NON-CONFLICT OF INTEREST CERTIFICATION

MUNICIPALITY OF PONCE

The Subrecipient certifies that to the best of its knowledge:

1. No public servant of this executive agency has a pecuniary interest in this agreement, contract, 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 of 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."

Luis M. Irizarry Pabón

Luis M. Irizarry Pabón (May 24, 2023 13:40 EDT)

Signature

Date

Luis M. Irizarry Pabón

Printed Name

Mayor
Municipality of Ponce

Position