



GOVERNMENT OF PUERTO RICO
DEPARTMENT OF HOUSING

AMENDMENT B

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

AMENDMENT B TO THE SUBRECIPIENT AGREEMENT BETWEEN THE

PUERTO RICO DEPARTMENT OF HOUSING
AND THE

MUNICIPALITY OF TOA BAJA

Contract No. 2022-DR0185
Amendment No. 2022-DR0185B



This **AMENDMENT B TO THE SUBRECIPIENT AGREEMENT** ("**AMENDMENT B**") is entered into this 4 day of August, 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 Guaynabo, Puerto Rico; and the **Municipality of Toa Baja** ("**Subrecipient**"), a Municipality with principal offices at Toa Baja, Puerto Rico, represented herein by its Mayor, Bernardo Márquez García, of legal age, married, and resident of Toa Baja, Puerto Rico; collectively the "**Parties**".

I. RECITALS AND GENERAL AWARD INFORMATION

WHEREAS, on October 8, 2021, the Parties executed a Subrecipient Agreement, Contract Number **2022-DR0185** ("**Agreement**"), for **SIX HUNDRED THIRTY-SIX THOUSAND FIVE HUNDRED TWELVE DOLLARS (\$636,512.00)** for the Subrecipient to undertake its activities under the **Municipal Recovery Planning Program** ("**MRP**" or "**Program**"). The Parties agreed on a performance period of **twelve (12) months** from the date of the execution of the Agreement ending on **October 8, 2022**.

WHEREAS, on October 7, 2022, the Parties executed an **AMENDMENT A** to the Agreement, Contract Number **2022-DR0185A** ("**AMENDMENT A**"). Via **AMENDMENT A**, **Exhibit D** (Budget), **Exhibit F** (HUD General Provisions and Other Federal Statutes, Regulations, and PRDOH Requirements) and **Exhibit H** (Subrogation and Assignment Provisions) were updated and incorporated by reference into the Agreement. Also, the **PERIOD OF PERFORMANCE** and **END DATE** of the Agreement were extended for an additional period of **ten (10) months**, resulting in a new performance period of **twenty-two (22) months** from the date of the execution of the Agreement ending on **August 8, 2023**.

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 B** 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 B**.

WHEREAS, the Subrecipient has the legal power and authority to enter into this **AMENDMENT B** with the PRDOH, in accordance with Article 1.008(q) of Act No. 107 of

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August 14, 2020, also known as the "Puerto Rico Municipal Code", 21 L.P.R.A. § 7013(q); and by signing this **AMENDMENT B** 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 B** subject to the following:

II. TERMS AND CONDITIONS

A. SAVINGS CLAUSE

The information included in this **AMENDMENT B** 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 B**. 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 agreed to amend the **END TERM** of the Agreement to **April 8, 2024**. 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 B** to accommodate the aforementioned term extension.

Also, a new exhibit, **Exhibit I** (Non-Conflict of Interest Certification), is being incorporated by reference into the Agreement via this **AMENDMENT B**. Modifications to **Section II. ATTACHMENTS** and **Section X. COMPLIANCE WITH FEDERAL STATUTES, REGULATIONS AND THE TERMS AND CONDITIONS OF THE FEDERAL AWARD AND ADDITIONAL PRDOH REQUIREMENTS** are being incorporated via this **AMENDMENT B** to accommodate the introduction of the aforementioned new exhibit.

Moreover, an updated **Section XIII. FORCE MAJEURE** is being incorporated by reference into the Agreement and **Section XXXI. LIMITATIONS PENDING ENVIRONMENTAL CLEARANCE** is being added to the Agreement via this **AMENDMENT B**.

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

C. AMENDMENTS

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

| | |
|--|--|
| 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 Entity Identifier: | Unique Entity ID: FFMUBT6WCM1 |
| Federal Award project description: | See Exhibit A ("Scope of Work") |

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|--|---|
| Subrecipient Contact Information: | Bernardo Márquez García Mayor Municipality of Toa Baja PO Box 2359 Toa Baja PR 00951 alcalde@toabaja.com 787-261-0202 |
| Subrecipient Unique Entity Identifier: | Unique Entity ID #: VPAWVFBB7GH5 |
| Subaward Period of Performance: | Start Date: Effective Date, as defined in Section V of the Agreement, as amended. End Date: Thirty (30) months from Start Date |
| Funds Certification: | Dated: October 1, 2021 Authorized Amount: \$636,512.00 Funds Allocation: CDBG-DR "r01p06mrp-doh-na" Account Number: 6090-01-000 See Exhibit E ("Funds Certification") |

b. **Section II. ATTACHMENTS** of the Agreement is being amended as follows:

| | |
|-----------|--|
| Exhibit A | Scope of Work |
| Exhibit B | Timelines and Performance Goals |
| Exhibit C | Key Personnel |
| Exhibit D | Budget |
| Exhibit E | Funds Certification |
| Exhibit F | HUD General Provisions and Other Federal Statutes, Regulations, and PRDOH Requirements |
| Exhibit G | Special Conditions |
| Exhibit H | Subrogation and Assignment Provisions |
| Exhibit I | Non-Conflict of Interest Certification |

c. **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 extends from the date of its execution, ending on **April 8, 2024**.*

*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 end on **April 8, 2024**. 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) **April 8, 2024**; (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.

[...]

- d. **Section X. COMPLIANCE WITH FEDERAL STATUTES, REGULATIONS AND THE TERMS AND CONDITIONS OF THE FEDERAL AWARD AND ADDITIONAL PRDOH REQUIREMENTS** of the Agreement is being amended to include an additional paragraph that refers to the new **Exhibit I** (Non-Conflict of Interest Certification):

[...]

Moreover, the **Exhibit I** ("Non-Conflict of Interest Certification"), attached herein and made an integral part of this Agreement, outlines several situations that may reasonably be considered as conflicts of interest. The Subrecipient shall disclose and certify that, to the best of its knowledge, none of the situations exist or may exist at the date of the execution of the Agreement. The aforementioned certification aids PRDOH, in its role as grantee, to identify, evaluate, disclose and manage apparent, potential, or actual conflicts of interest related to CDBG-DR funded projects, activities, and/or operations.

[...]

- e. 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.

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- f. The Parties agree to add **Section XXXI. 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 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.*

- g. **Exhibit I** (Non-Conflict of Interest Certification) is being incorporated by reference into the Agreement via **Amendment B**. (see **Attachment I**).

III. SEVERABILITY

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

IV. SECTION HEADINGS AND SUBHEADINGS

The section headings and subheadings contained in this **AMENDMENT B** 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 B**.

V. COMPTROLLER REGISTRY

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

[SIGNATURES ON THE FOLLOWING PAGE.]

IN WITNESS THEREOF, the Parties hereto execute this **AMENDMENT B** 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 (Aug 4, 2023 19:08 EDT)
Name: William O. Rodríguez Rodríguez
Title: Secretary

MUNICIPALITY OF TOA BAJA
Subrecipient

By: Bernardo Márquez García
Bernardo Márquez García (Aug 4, 2023 17:46 EDT)
Name: Bernardo Márquez García
Title: Mayor of Toa Baja



ATTACHMENT I

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NON-CONFLICT OF INTEREST CERTIFICATION MUNICIPAL RECOVERY PLANNING PROGRAM MUNICIPALITY OF TOA BAJA

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."

Bernardo Márquez García
Bernardo Márquez García (Aug 4, 2023 17:46 EDT)
Signature

August 4, 2023
Date

Bernardo Márquez García
Printed Name

Mayor
Position