

**SECOND AMENDMENT TO COMMUNITY DEVELOPMENT BLOCK GRANT
DISASTER RECOVERY (CDBG-DR) GRANT AGREEMENT**

Grantee's Name: Commonwealth of Puerto Rico

Tax ID Number: 6-60558579

DUNS Number: 1-25967484

Unique Federal Award Identification Number (FAIN): B-18-DP-72-0001

Appropriation Account: 86X0162

Program Accounting Code: M3H

Federal Award Date [the date signed by the authorized HUD official]:

Period of Performance Start Date: September 20, 2018

Period of Performance End Date: September 20, 2024

Date Use of Funds May Begin: September 20, 2017

Amount of Federal Funds Obligated by this action: \$6,520,783,000

Amount of Federal Funds Previously Obligated: \$1,700,000,000

Dates of Prior Obligation (if applicable): February 21, 2020

Total Amount of the Federal Award: \$8,220,783,000

Federal awarding agency: Department of Housing and Urban Development

Contact information for HUD: Tennille S. Parker, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Community Planning and Development, U.S. Department of Housing and Urban Development, 451 7th Street, S.W., Room 7282, Washington, DC 20410

Assistance Listing: 14.228 Community Development Block Grants/State's program

Indirect Cost Rate for the Grant: See Attachment 1

Check One: Original Funding Approval **or** Amendment: Second

I. Recitations and Agreement to Amend

The Commonwealth of Puerto Rico (“Grantee”) and the United States Department of Housing and Urban Development (the “Department” or “HUD”) entered a COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY (CDBG-DR) GRANT AGREEMENT (the “Agreement”) that was effective February 21, 2020. The Agreement and all amendments thereto are made pursuant to the authority of Public Law 115-123 (Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Division B, Subdivision 1 of the Bipartisan Budget Act of 2018) (February 9, 2018)). The Agreement obligated \$1,700,000,000 of the \$8,220,783,000 allocated to the Grantee in response to Hurricanes Irma and Maria.

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal award (2 CFR part 200) require HUD to have in place a framework for evaluating the risks posed by applicants before they receive Federal awards. Specific conditions that correspond to the degree of risk assessed may be applied to the Federal award and may be adjusted post-award when merited. Requirements must be removed once the conditions that prompted them have been satisfied.

Section II of the Agreement imposed Specific Conditions in accordance with 2 CFR part 200. On May 21, 2020, Assistant Secretary John Gibbs (Acting) signed the AMENDMENT TO COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY (CDBG-DR) GRANT AGREEMENT (“First Amendment”), which modified the Specific Conditions of the Agreement to update the risk-based specific condition imposing additional requirements for policies and procedures and training. The First Amendment did not modify other terms of the Agreement.

Based on a re-evaluation of the risk factors identified in 2 CFR 200.206 and 200.208, including the grantee’s history of compliance with grant requirements, HUD has determined that the conditions that prompted some requirements have been satisfied, and it is therefore appropriate to remove or modify some of the specific conditions in the Agreement, as amended by the First Amendment.

Now, therefore, the Grantee and HUD agree to the terms of this Second Amendment, which include the following amendments to the Agreement, as modified by the First Amendment:

1. When signed by HUD, this instrument obligates additional CDBG-DR funds to the Grantee as described on Page 1. The grant includes funds obligated by the Agreement and this Second Amendment. The grant is subject to all requirements in the Agreement as modified by this Second Amendment and the Grantee agrees to use the grant funds in accordance with the Agreement, as amended. As described in paragraph 3, this means that from the date HUD signs this Second Amendment, the Grantee shall comply with the Specific Conditions in this Second Amendment and not the Specific Conditions in the Agreement. The requirements of the Appropriations Act and title I of the Housing and

Community Development Act of 1974 (HCDA or HCD Act) (42 USC 5301 et seq.) and implementing regulations at 24 CFR part 570, as now in effect and as may be amended from time to time, and as modified by waivers, alternative requirements, and other requirements published in Federal Register notices, are incorporated into the grant terms by the Agreement and remain in effect. If HUD publishes Federal Register notices that modify grant requirements that are described in the General Terms and Conditions or Appendix A of the Agreement, the grant requirements apply as modified.

2. The Grantee must comply with the applicable requirements at 2 CFR part 200, as amended, to the extent that part 200 is incorporated into and made applicable by 24 CFR part 570, subpart I or applicable Federal Register notices that govern this grant. Recent amendments to 2 CFR part 200 were effective on August 13, 2020, November 12, 2020, and February 22, 2021. Where any previous or future amendments to 2 CFR part 200 replace or renumber sections of part 200 that are cited specifically in applicable Federal Register notices, the Agreement (as may be amended), or program regulations, activities carried out under the grant after the effective date of the part 200 amendments will be governed by the part 200 requirements as replaced or renumbered by the part 200 amendments.
3. The Grantee shall comply with all specific conditions imposed by section II of this Second Amendment. As of the date HUD signs this Second Amendment, specific conditions in section II of this Second Amendment shall supersede all specific conditions previously imposed by the Agreement or the First Amendment. Activities undertaken after HUD signs this Second Amendment shall be governed by the specific conditions in this Section Amendment until modified or removed by HUD in writing.
4. Before submitting this signed Second Amendment to HUD, the Grantee shall attach a schedule of its indirect cost rate(s) in the format set forth in Attachment 1. The Grantee shall provide HUD with a revised schedule when any change is made to the rate(s) described in the schedule. The schedule and any revisions HUD receive from the Grantee shall be incorporated herein and made a part of the Agreement, as amended, provided that the rate(s) described comply with 2 CFR part 200, subpart E.
5. Except as set forth in this Second Amendment, the Agreement is unaffected and shall continue in full force and effect in accordance with its terms. If there is a conflict between this Second Amendment and the Agreement, the terms of this Second Amendment will prevail.
6. The Grantee shall attach this Second Amendment to its Agreement in its files.

II. Specific Conditions

1. Program Risk. With respect to the use of grant funds, the grantee must comply with the requirements of section 21210 of the Appropriations Act and requirements of the Puerto Rico Oversight, Management and Economic Stability Act, 48 U.S.C. 2101 *et seq.* (PROMESA).

2. Financial Management Capacity Risk. Based on the risk posed by the Grantee's limited financial management staff capacity and to ensure compliant implementation of the Grantee's internal control framework, the Grantee must maintain and adhere to the policies and procedures for its established Financial Management System and internal control framework or submit to HUD a new plan with a schedule for otherwise obtaining and maintaining the necessary financial management capacity.

So that HUD can better monitor the Grantee's financial management capacity, the Grantee shall provide, via upload in DRGR, support documentation for each voucher drawdown request made in DRGR for its CDBG-DR grant. The Grantee shall continue to upload support documentation for its voucher drawdown requests in DRGR until completion of HUD's first two on-site monitoring reviews after the effective date of this Second Amendment and the Grantee's resolution of any significant findings that result from those reviews.

3. Policies and procedures. To address the risks caused by the scale and complexity of the Grantee's programs, the Grantee shall submit the final policies and procedures for implementation of activities to HUD within 30 days of HUD's execution of this Second Amendment (if not already submitted) or before the Grantee awards funds to subrecipients, whichever is later. For good cause, HUD may grant a written extension of this deadline.

4. Additional implementation plan capacity assessment requirements. To reduce risk of noncompliance due to inadequate financial management capacity and program complexity, the Grantee shall submit evidence that it has secured or is in the process of securing staff and contractors necessary to effectively implement CDBG-DR funded programs and projects. Staff and contractors must be identified by the grantee in a Staff Analysis Worksheet. The Staff Analysis Worksheet must be submitted within 90 days of this Second Amendment as a supplement to the grantee's pre-grant implementation and capacity assessment submission. The Worksheet must show all staff that are in place and all their responsibilities, including:

- staff that have responsibilities for program-related civil rights compliance;
- staff responsible for contractor oversight;
- staff responsible for the financial oversight of funds and implementation of programs associated with the obligation; and,
- staff responsible for fraud prevention and their specific responsibilities.

After receiving the Staff Analysis Worksheet, HUD may establish a specific condition requiring the Grantee to hire specific staff positions that HUD determines are critical to the Grantee's implementation of CDBG-DR funded programs and projects. Any specific position required by HUD must be advertised within 90 days of HUD's inclusion of a specific position in a grant condition and filled within 90 days following advertisement. To reduce the risk of noncompliance within a particular program or project due to lack of staff capacity, when HUD requires the Grantee to hire a specific position, a portion of CDBG-DR funds the Grantee designated at risk of noncompliance shall remain in a restricted balance in the Disaster Recovery and Grants Reporting (DRGR) system until HUD receives evidence that the Grantee has advertised and filled the required staff positions. The amount of the restricted balance will be identified in the grant condition and will be based on HUD's determination of the amount that will allow the Grantee to undertake initial work to support the launch of the at-risk activity but will reduce the risk by adding staff capacity before incurring significant activity implementation costs.

5. Grantee Oversight of Other Entities. Based on the risk of noncompliance with grant requirements due to the use of subrecipients and agencies or instrumentalities of the Grantee that receive a subaward or otherwise carry out any part of this grant (Commonwealth Agencies) that do not have experience administering CDBG-DR or CDBG-MIT grants, the Grantee must do the following:

- (a) Within 90 days of the execution of this Second Amendment or later date if extended by HUD, the Grantee must provide an updated monitoring plan for overseeing the performance of subrecipients and Commonwealth Agencies under the approved Action Plan for Disaster Recovery that includes:
 - i. A plan to monitor the activities of the subrecipient or Commonwealth Agency as necessary to ensure that the funds are used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions that apply to the use of the funds, and that performance goals are achieved, including:
 - (1) Review of financial and performance reports required by the Grantee;
 - (2) Review of expenditures to determine that all uses of funds conform to the cost principles at 2 CFR Part 200, Subpart E – Cost Principles, and are net of all applicable credits;
- (b) Determine whether specific conditions on subawards to subrecipients or in interagency agreements with Commonwealth Agencies are needed and impose specific conditions as needed in accordance with [2 CFR §200.208].

- (c) Based on the subrecipient's or Commonwealth Agency's risk of noncompliance, ensure proper accountability and compliance with program requirements and achievement of performance goals by:
 - i. Providing the subrecipient and Commonwealth Agency with training and technical assistance on program-related matters.
 - ii. Submitting policies and procedures that describe how, based on risk, the Grantee will perform on-site reviews of the subrecipient and Commonwealth Agency's program operations and arrange for agreed-upon-procedures engagements as described in 2 CFR 200.425;
- (d) For subrecipients only, verify that every (where not included in the audit of the grantee) subrecipient is audited as required by Subpart F—Audit Requirements of 2 CFR part 200 when it is expected that the subrecipient's subaward expended during the respective fiscal year equaled or exceeded the threshold set forth in 2 CFR §200.501 Audit requirements.
- (e) Consider whether the results of the subrecipient and Commonwealth Agency's audits, on-site reviews, or other monitoring necessitate adjustments to the Grantee's own records.
- (f) Enforce all interagency agreements with Commonwealth Agencies and take enforcement action against noncompliant subrecipients as described in [2 CFR §200.339] Remedies for noncompliance of this part and in program regulations.
- (g) Update the monitoring plan in accordance with this condition if after submittal of an updated monitoring plan, a new subrecipient or Commonwealth Agency is added/changed, or an action plan amendment affects staff or contractors.

6. Fiscal Distress Risk. Based on the financial risk posed by the Grantee's fiscal distress (as evidenced by ongoing debt restructuring pursuant to PROMESA the grantee must comply with the requirements of the October 26, 2017 "ORDER GRANTING URGENT JOINT MOTION OF THE COMMONWEALTH OF PUERTO RICO, PUERTO RICO HIGHWAYS AND TRANSPORTATION AUTHORITY, PUERTO RICO ELECTRIC POWER AUTHORITY, AND THE PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY FOR ORDER CONCERNING RECEIPT AND USE OF ANTICIPATED FEDERAL DISASTER RELIEF FUNDS AND PRESERVING RIGHTS OF PARTIES," as may be amended from time to time by the United States District Court for the District of Puerto Rico or other court with jurisdiction (the Order).

As required by the Order, grant funds received by the Grantee or other Non-Federal entity (as defined by 2 CFR 200.69) shall be deposited solely into Disaster Relief Accounts, meaning a new, segregated, non-co-mingled, unencumbered account held in the name of the Grantee or of the Non-Federal entity to whom the funds have been provided, and shall be used solely for eligible activities. Evidence of the Disaster Relief Account held by the Grantee must be provided to HUD within 60 days of the date of this Second Amendment with the submission of a completed SF-1199 (direct deposit form) or other similar form specified by HUD. The grantee must maintain documentation of the Disaster Relief Accounts held by other Non-Federal entities that receive grant funds from the Grantee.

7. Program Risk - Limitation on Use of Funds for Electrical Power System Enhancements.

Based on the risk posed by the complexity of activities designed to enhance or improve electrical power systems, the following condition is imposed:

The Grantee is prohibited from using CDBG-DR funds for activities to enhance or improve electric power systems until after HUD publishes the *Federal Register* notice governing the use of the \$2 billion in Community Development Block Grant disaster recovery (CDBG-DR) funds for enhanced or improved electrical power systems. This limitation includes a prohibition on the use of CDBG-DR funds for activities carried out to meet the matching requirement, share, or contribution for any Federally funded project that is providing funds for electrical power systems improvements until HUD publishes the *Federal Register* notice governing the use of CDBG-DR funds to provide enhanced or improved electrical power systems. After publication of HUD's electrical power systems notice, use of CDBG-DR funds to mitigate risks to electric power systems, including the provision of non-Federal cost share for any Federally-funded activity related to electrical power systems, shall be limited to activities that meet the requirements for CDBG-DR funds and that are not inconsistent with the requirements of HUD's electrical power systems notice and any additional requirements on the use of CDBG-DR funds published in the electrical power systems notice.

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Attachment 1

The grantee shall submit a schedule of its indirect cost rate(s) in the format set forth. The grantee shall provide HUD with a revised schedule when any change is made to the rate(s) described in the schedule.

The schedule and any revisions HUD receive from the grantee shall be incorporated and made a part of the grant agreement (the Agreement as may be amended from time to time), provided that the rate(s) described comply with 2 CFR part 200, subpart E.

<u>Administering Department/Agency</u>	<u>Indirect Cost Rate</u>	<u>Direct Cost Base</u>
PRDOH	1.39% %	\$440,241,610
_____	_____ %	_____
_____	_____ %	_____
_____	_____ %	_____
_____	_____ %	_____
_____	_____ %	_____

Instructions: The grantee must identify each agency or department of the grantee that will carry out activities under the grant, the indirect cost rate applicable to each department/agency, and the type of direct cost base to which the rate will be applied. Do not include indirect cost rates for subrecipients. A governmental department or agency unit that receives more than \$35 million in direct Federal funding must submit its indirect cost rate proposal to its cognizant agency for indirect costs.