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**MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE PUERTO RICO STATE HISTORIC PRESERVATION OFFICE,
THE PUERTO RICO CENTRAL OFFICE FOR RECOVERY,
RECONSTRUCTION AND RESILIENCY AND
THE PUERTO RICO PORTS AUTHORITY
REGARDING THE DEMOLITION OF FIVE BUILDINGS AND THE CONSTRUCTION
OF A SHED OVER THE GRAVING DOCK, SAN JUAN PIER #15 - #16,**

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WHEREAS, the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security proposes to provide Federal disaster assistance through FEMA's Public Assistance Program pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288, through the Puerto Rico Central Office For Recovery, Reconstruction and Resiliency (COR3) (Recipient) to the Puerto Rico Ports Authority (PRPA) (Subrecipient) for the Improved Project of the San Juan Pier #15 - #16 in San Juan, Puerto Rico which was substantially damaged by Hurricane María, declared disaster DR-4339-PR, on September 20, 2017; and

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WHEREAS, the Subrecipient proposes the demolition of Buildings B and C, the Graving Dock Administration Building, the Pump House, Pump Room, and the resurfacing of the footprints of the five (5) buildings after they are demolished. In addition, the Subrecipient proposes to construct a 148' high x 674' long x 200' wide metal shed over the Graving Dock structure, which will cover the entire structure (Undertaking); and

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WHEREAS, FEMA has defined the area of potential effects (APE) for this Undertaking to include the property site with approximately 66,626.03 square meters, as well as the viewshed defined by a 200-meter radius encompassing an area measuring 123,837 square meters; and

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WHEREAS, FEMA, in consultation with the State Historic Preservation Officer (SHPO), has determined that the Graving Dock structure is eligible for listing in the National Register of Historic Places (NRHP) under Criterion A (History) and Criterion C (Architecture) for its historic and engineering significance. In addition, Buildings B and C, and the Administration Building are also eligible for listing in the NRHP under Criterion A (History) and Criterion C (Architecture) as they are an integral part of the original facilities of Pier #15, and, despite their current deteriorated state, continue to convey the historical importance of the site. The Pier #15 structure, the existing Graving Dock and associated buildings are related to the 1941-1949 Isla Grande Military Base and to the post-1950 development of port services for the repair and maintenance of commercial and private vessels; and

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WHEREAS, FEMA has reviewed the proposed Undertaking and has found that the construction of the new Graving Dock Shed and the demolition of the associated buildings and structures will have an adverse effect on these historic properties. Furthermore, FEMA found that the new 148 FT high metal shed structure will adversely affect the viewshed and surroundings of the nearby Miramar Historic Zone, designated as such by territorial law in 2005, and by the Planning Board in 2007. FEMA, in consultation with the SHPO, has determined that the Miramar Historic Zone

48 is eligible for listing in the NRHP under Criterion A (History) and Criterion C (Architecture) for
49 its historic and architectural significance; and

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51 **WHEREAS**, FEMA submitted a Section 106 consultation letter with its finding of Adverse
52 Effect to Historic Properties to SHPO on February 15, 2024, and, on February 26, 2024 (SHPO:
53 CF-02-15-24-04), SHPO concurred with FEMA’s finding; and

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55 **WHEREAS**, on February 15, 2024, FEMA informed the Subrecipient of the Adverse Effect
56 determination for the proposed undertaking, and on March 27, 2024, invited the Subrecipient to
57 participate in the development of an MOA to resolve the Adverse Effect; and

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59 **WHEREAS**, on March 27, 2024, FEMA notified the Advisory Council on Historic Preservation
60 (ACHP) regarding the Adverse Effect determination and asked if the ACHP wanted to
61 participate in the resolution of adverse effect process to satisfy FEMA’s Section 106
62 responsibilities pursuant to 36 CFR § 800.6(a)(1)(iii) and Stipulation II.C.6 of the FEMA
63 Statewide Programmatic Agreement amended May 5, 2023 (*Programmatic Agreement*). At the
64 time of the writing of this MOA the ACHP did not respond to FEMA’s invitation to participate;
65 and

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67 **WHEREAS**, on April 1, 2024, FEMA invited COR3 as the Recipient and PRPA as the
68 Subrecipient to become Signatories to this MOA; and

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70 **WHEREAS**, in accordance with 36 CFR § 800.2(d) and Stipulation I.C (Public Participation) of
71 the Programmatic Agreement, the outcome of the consultation process must be posted for public
72 comment. FEMA will provide a public comment period of two weeks; and

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77 **NOW, THEREFORE**, FEMA and SHPO (Signatories) and COR3 and PRPA (Invited
78 Signatories) agree that the Undertaking shall be implemented in accordance with the following
79 stipulations in order to mitigate the adverse effect of the Undertaking on the historic properties.

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81 **STIPULATIONS**

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83 To the extent of its legal authority and in coordination with the SHPO, COR3 and PRPA, FEMA
84 will require that the following measures are implemented:

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88 **I. Mitigation Measures**

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90 To the extent of its legal authority and in coordination with the SHPO, COR3 and PRPA,
91 FEMA will require that the following measures are implemented within seventy-two (72)
92 months from the date of execution of this MOA.
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94 **A. Public Display of Original Industrial Machinery of Building B**

95 In accordance with the *Programmatic Agreement, Appendix F, Treatment Measure*
96 *section B Public Interpretation*, the Subrecipient shall salvage and preserve the
97 original industrial machinery in Building B and develop a plan to incorporate it in a
98 public display within the APE.
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- 100 1. Within thirty (30) days after the date of execution of this MOA, FEMA shall
101 coordinate a meeting among the signatories and invited signatories to discuss the
102 requirements of the MOA specific to the successful and timely completion of the
103 Public Display of original industrial machinery in Building B. This discussion
104 should address the preparatory work as well as concepts for the public display.
105 The Public Display plan may include signs, displays, websites and other similar
106 interactive mechanisms to educate the public on historic properties within the
107 local community, territory or region. Once Signatories and Invited Signatories
108 have the opportunity to comment on the Public Display plan, the Subrecipient
109 shall continue to implement the plan within the seventy-two (72) months agreed
110 for the completion of all treatment measures.
111
- 112 2. Within ninety (60) days after the completion of the meeting, the Subrecipient
113 shall identify the contractor who will perform the preparatory work and the
114 specialist who will design and execute the Public Display. Preparatory work shall
115 include removal and relocation of Original Industrial Machinery of Building B.
116 Prior to awarding the contract, the Subrecipient will submit contractor resume to
117 the Signatories for a fifteen (15) day qualifications review.
118
- 119 3. Within ninety (90) days after the onboarding of the contractor, the Subrecipient
120 shall submit the proposed Public Display plan, and the design and execution plan
121 to the Signatories and COR3 for a thirty (30) day review and concurrence period.
122 The plan shall include the Public Display's proposed objectives, design and
123 interpretive concept, public engagement, and site selection, as well as the
124 schedule for execution. The comments of the Signatories and COR3 may be
125 considered before concluding review and concurrence.
126
- 127 4. Within eighteen (18) months of the identification and completion of the site for
128 the display the Subrecipient will then carry out the construction and installation
129 of the Public Display. The Subrecipient shall be responsible for any required
130 conservation, maintenance and refurbishing of the machinery, and the public
131 display and costs associated with these activities.
132

133 **B. Recordation: Digital Photography Package of the Building B, Building C,
134 Administration Building, Graving Dock structure and Pump House**

135 In accordance with the *Programmatic Agreement*, the Subrecipient shall prepare
136 digital photography of the Building B, Building C, Administration Building, Graving
137 Dock structure and Pump House, as follows:
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139 1. Digital Photography Package: Prior to project implementation, the Subrecipient
140 shall submit the name and resumé of individuals that meets Secretary of the
141 Interior (SOI) Professional Qualifications Standards to FEMA and SHPO for
142 review and approval within forty-five (45) days of execution of the MOA. This
143 individual shall oversee the successful delivery of a digital photography package
144 for the Subrecipient meeting the appropriate Historic American Building Survey
145 (HABS) standards. As established in the *Programmatic Agreement, Appendix F*,
146 the Subrecipient will digitally photograph the interior and exterior. The
147 Subrecipient will take photographs of the following views:

- 148 a. Elevation/oblique of the four primary facades
 - 149 b. Detail of the main entrance
 - 150 c. Representative window detail photographs
 - 151 d. Representative interior views
 - 152 e. Any additional significant details identified by the qualified contractor.
- 153 i. All views shall be keyed to a site plan while interior views shall be keyed
154 to a floor plan of the building/structure. The photographs shall be indexed
155 according to the date photographed. Digital photography package may be
156 submitted via a secure digital transfer method such as a cloud storage
157 service (e.g., Google Drive, Dropbox) or via a USB drive if digital
158 transfer is not possible. This will include a completed state architectural
159 inventory form (SHPO Inventory Template), and a written site history of
160 the historic property.
 - 161 ii. Within one hundred and twenty (120) days after the onboarding of the
162 qualified contractor, PRPA shall submit the digital photography package
163 to FEMA and SHPO for a thirty (30) day review and comment.
 - 164 iii. Once approved by FEMA and SHPO, the demolition of Buildings B, C,
165 Administration building and Pump station may commence.
 - 166 iv. The Subrecipient shall submit within thirty (30) days of the digital
167 photography package approval by FEMA and SHPO a copy of the final
168 approved documentation shall be sent to the Institute of Puerto Rican
169 Culture (ICP) and SHPO for permanent retention.

172 **C. Architecture in harmony with the Miramar Historic Zone**

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174 The Subrecipient shall submit to FEMA and SHPO the revised design of the
175 proposed new Graving Dock metal shed structure for approval. The scale and
176 volume of the proposed Graving Dock structure affects the viewshed of the
177 Miramar Historic Zone. The revised design shall minimize the adverse effect to the
178 viewshed and surroundings of the Miramar Historic Zone including that the
179 appearance must be harmonious with the industrial character of the area in which it
180 will stand.

- 181
- 182 1. Within sixty (60) days after the date of execution of this MOA, (not to conflict
183 with Treatment Measure A meeting) the Subrecipient shall coordinate a meeting

184 among the Signatories and COR3 to discuss the requirements for the completion
185 of this treatment measure. The Subrecipient will consider the following guidance:
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- 187 a. The SOI provides general guidelines for infill and new construction which
188 may affect historic properties and districts. See, *The Secretary of the*
189 *Interior's Standards for Rehabilitation & Illustrated Guidelines for*
190 *Rehabilitating Historic Buildings, Preservation Brief #14 New Exterior*
191 *Additions to Historic Buildings: Preservation Concerns*, and *New*
192 *Construction within the Boundaries of Historic Properties* in NPS.gov. In
193 general terms, any new construction must be compatible in size, scale,
194 rhythm, materials, textures, colors and character within or adjacent to a
195 Historic District. New construction needs to be built in a manner that
196 protects the integrity of the historic building(s) and the property's setting.
- 197 b. Within twelve (12) months of the completion of the meeting the
198 Subrecipient will submit to FEMA and SHPO a design meeting the above
199 standards and discussions/agreements in the meeting. FEMA and SHPO will
200 have sixty (60) days for review/comments or approval.
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202 **II. Applicability**

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204 A. This MOA only applies to FEMA's Section 106 review of the FEMA Project
205 Worksheet (PW) PA-02-PR-4339-PW-03364: (GM-64211) San Juan Pier #15 - #16
206 Improved Project (Alternate Project) for the Undertaking.
207

208 B. All time designations are in calendar days. If any Signatory does not respond to a
209 request per timelines defined within the MOA, FEMA may assume Signatory's
210 concurrence.
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212 **III. Public Involvement**

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214 A. FEMA, SHPO and COR3 will publish the deliverables (except contractor
215 qualifications) of the consultation process for public comments in their Social Media
216 platforms and Website pages. Public comments will be accepted in writing/email and
217 during the public comment period. Public comment period shall match FEMA and
218 SHPO review/comment period. Copies of the MOA will be available for review in
219 each platform. Any comments must be adjudicated before the approval and signature
220 of the agreement document.
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222 **IV. Unanticipated Discoveries. Previously Unidentified Properties or Unexpected** 223 **Effects:**

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225 A. Upon notification by a sub-recipient of an unexpected discovery, or if it appears
226 that an Undertaking has affected a previously unidentified property or affected a
227 known historic property in an unanticipated manner, in accordance with Stipulation

228 I.B.3(e) of the Programmatic Agreement, the Recipients shall immediately notify
229 FEMA and require the sub-recipient to:

- 230
- 231 1. Stop construction activities in the vicinity of the discovery.
- 232
- 233 2. Take all reasonable measures to avoid or minimize harm to the property until
234 FEMA has completed consultation with the SHPO, and any other consulting
235 parties. Upon notification by the Recipients of a discovery, FEMA shall
236 immediately notify the SHPO, and other consulting parties that may have an
237 interest in the discovery, previously unidentified property or unexpected effects, and
238 consult to evaluate the discovery for National Register eligibility and/or the effects
239 of the Undertaking on historic properties.
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241 **V. Duration and Extension**

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- 243 A. This MOA will remain in effect for six (6) years from the date that it has been
244 executed or until FEMA determines that it has been satisfactorily fulfilled, unless
245 otherwise extended pursuant to Section V(B) or terminated or amended pursuant to
246 Section VIII of this MOA.
- 247
- 248 B. This MOA will be null and void if its terms are not carried out within the six (6)
249 years duration. Prior to such time, FEMA can extend the duration of this MOA to
250 align with timeframes required to complete the work (and meet all regulatory
251 conditions and requirements associated with that work) in any FEMA approved
252 activities that apply to this Undertaking, provided nothing in the Undertaking or the
253 FEMA-approved work scope has changed subsequent to the MOA's execution.
254 Within thirty (30) calendar days of the Subrecipient's determination for the need of
255 an MOA time extension, the Subrecipient will notify the Recipient of the
256 circumstance and need for the extension. The Recipient will notify FEMA of the
257 circumstance and need for an MOA time extension. Once the MOA time extension
258 is agreed upon by FEMA, FEMA will notify the SHPO and Invited Signatories in
259 writing. Unless any of the parties' object to the no-scope change MOA time
260 extension within ten (10) business days, the duration of this MOA will be
261 considered extended.
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263 **VI. Reporting Requirements**

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- 265 A. Every six months, following the execution of this MOA and until it expires or is
266 terminated according to the terms and conditions herein, the Invited Signatories, who
267 have assumed responsibility for specific treatment measures outlined in this MOA,
268 will prepare, and provide the Signatories with a treatment measure status report.
- 269
- 270 1. Each status report will include the following information:
 - 271 a. Status of treatment measure completion, including completion dates.
 - 272 b. Anticipated schedule for completion.
- 273

274 2. Review of six (6) Month Report: Within thirty (30) days of receipt, the
275 Signatories will review the treatment measure status report and provide written
276 feedback to all Invited Signatories. FEMA may request a conference call to
277 discuss the report content and discuss the implementation of this MOA.
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VII. Dispute Resolution and Public Objection

280 A. Should any Signatory or Invited Signatory to this MOA object at any time to any
281 actions proposed or the manner in which the terms of this MOA are implemented,
282 FEMA shall consult with such party to resolve the objection. If FEMA determines that
283 the dispute cannot be resolved, FEMA will:

284 1. Forward all documentation relevant to the dispute, including FEMA's proposed
285 resolution of the dispute to the ACHP in accordance with 36CFR§800.11(e). The
286 ACHP shall provide FEMA with its advice on the resolution of the objection within
287 thirty (30) days of receiving adequate documentation. Prior to reaching a final
288 decision on the dispute, FEMA shall prepare a written response that takes into
289 account any timely advice or comments regarding the dispute from the ACHP and
290 Signatories and provide them with a copy of this written response. FEMA will then
291 proceed according to its final decision.

292 2. If ACHP does not provide advice regarding the dispute within the thirty (30)
293 daytime period, FEMA shall make a final decision on the dispute and proceed
294 accordingly. Prior to reaching such a final decision, FEMA shall prepare a written
295 response that takes into account any timely comments regarding the dispute from
296 the Signatories or Invited Signatories to the MOA and provide them and the ACHP
297 with a copy of such written response. FEMA will then proceed according to its final
298 decision.

299 B. Any recommendation or comment provided by the ACHP will be understood to pertain
300 only to the subject of the dispute, and the Signatories and Invited Signatories to this
301 MOA remain responsible to fulfill all remaining actions required herein that are not
302 subject of the dispute.

303 C. At any time while the MOA is in effect, should a member of the public object in writing
304 to the MOA, its implementation or related documentation, FEMA shall take the
305 objection into account, notify the Recipient, Subrecipient and SHPO, and consult as
306 needed with the objecting party and appropriate consulting parties prior to resolution
307 of the objection. FEMA may request that the ACHP participate in the consultation to
308 resolve the public objection. The Subrecipient is not required to cease work on
309 activities unrelated to the objection while the objection is being reviewed and resolved.
310

VIII. Amendments, Termination and Non-Compliance

312 A. Any Signatory or Invited Signatory to this MOA may propose to FEMA that the MOA
313 be amended. This MOA may be amended when such an amendment is agreed to in

314 writing by all Signatories and Invited Signatories. The amendment will be effective on
315 the date that it is signed by all Signatories and Invited Signatories.

316 B. If any Signatory or Invited Signatory to this MOA determines that its terms will not or
317 cannot be carried out, that party will immediately consult with the other parties to
318 attempt to develop an amendment in accordance with Stipulation VIII(A).

319 C. If within thirty (30) days an amendment cannot be reached, any Signatory or Invited
320 Signatory may terminate the MOA upon written notification to the other Signatories.

321 D. Once the MOA is terminated, and prior to work continuing on the Undertaking, FEMA
322 must either a) execute a new MOA with the Signatories and Invited Signatories of this
323 MOA pursuant to the provision of 36 CFR § 800.7, request comments from the ACHP
324 and take those comments into account in providing a response. FEMA will notify the
325 Signatories and Invited Signatories in writing as to the course of action it will pursue.
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327 **IX. Execution of Agreement**

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329 A. This MOA will be executed in counterparts, with a separate page to be signed by each
330 Signatory and Invited Signatory.
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332 B. FEMA will provide each Signatory and Invited Signatory with a signed original of
333 this MOA. The MOA will become effective upon signature of all Signatory and
334 Invited Signatory parties and the filing of the signed MOA with the ACHP pursuant
335 to 36 CFR § 800.6(b)(1)(iv).
336

337 D. Execution and implementation of this MOA evidence that FEMA has taken into
338 account the effects of the Undertaking on historic properties, has afforded the
339 SHPO a reasonable opportunity to comment on the Undertaking and its effects on
340 historic properties, and that FEMA has satisfied its Section 106 responsibilities
341 for all aspects of the Undertaking.
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343 **X. Completion of Agreement**

344 A. The Subrecipient will notify the Recipient and FEMA when the Undertaking is
345 completed, and FEMA will notify the Signatories and Invited Signatories by e-mail
346 when it determines that the measures in Stipulations I. and III are completed and
347 opportunities for additional consultation under Stipulation I or discoveries or
348 unexpected effects described in Stipulation IV are unlikely, thereby fulfilling the
349 terms of this MOA.

350 **SIGNATORIES:**

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354 _____
355 John J. McKee
356 Regional Environmental Officer, Region 2
357 **Federal Emergency Management Agency**

Date

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José G. Baquero Tirado, Federal Disaster Recovery Coordinator

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Puerto Rico State Historic Preservation Officer

_____Date
Carlos A. Rubio Cancela, SHPO

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INVITED SIGNATORIES:

Puerto Rico Central Office for Recovery, Reconstruction and Resiliency

Date
Manuel A.J. Laboy Rivera, Executive Director

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Puerto Rico Ports Authority

Date
Joel M. Pizá Batiz, Executive Director