



COMMONWEALTH OF  
PUERTO RICO  
GOVERNOR

ALEJANDRO J. GARGA-PADILLA

MEMORANDUM OF  
UNDERSTANDING

Between

PUERTO RICO HIGHWAY and  
TRANSPORTATION AUTHORITY

And

U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION

For

PUERTO RICO HIGHWAY PROGRAM  
PROJECT and PROGRAM DELIVERY IMPROVEMENT  
In the  
COMMONWEALTH of PUERTO RICO

**MEMORANDUM OF UNDERSTANDING BETWEEN**  
**the COMMONWEALTH of PUERTO RICO HIGHWAY AND TRANSPORTATION**  
**AUTHORITY, and**  
**the U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY**  
**ADMINISTRATION,**  
**FOR PUERTO RICO HIGHWAY PROJECT and PROGRAM DELIVERY IMPROVEMENT**

This Memorandum of Understanding ("MOU") is entered into by and between the Commonwealth of Puerto Rico, Highway and Transportation Authority (PRHTA) and the United States Department of Transportation, Federal Highway Administration, (FHWA) collectively known as the "parties." This MOU is entered into under the authority of 23 U.S.C §§302, 308(a), and 315; 23 C.F.R. §1.3, §1.36 and 2 C.F.R. §200.205 and §200.207. The purpose of this MOU is to facilitate improvements to the PRHTA's Federal-aid billing procedures, to facilitate and enable the PRHTA's ability to be suitably equipped and organized to meet federal requirements by reinvigorating its organizational capacity, and to expedite project delivery in Puerto Rico.

This MOU establishes procedures, systems and project delivery objectives for the Puerto Rico Highway Program. It identifies the roles, responsibilities, and actions for the PRHTA and the FHWA to accelerate the funding, planning, design, and construction of various highway and bridge and surface transportation improvement projects. These actions are designed to improve the economic vitality of the Commonwealth of Puerto Rico and serve as a catalyst for sustainable job growth associated with highway construction within the Commonwealth of Puerto Rico.

WHEREAS, the PRHTA, as the Commonwealth's Transportation Agency, has jurisdictional and maintenance responsibilities for highways and bridges within the Commonwealth of Puerto Rico;

WHEREAS, 23 U.S.C. §302(a) requires a State Transportation Agency, including the PRHTA, to be suitably equipped and organized to discharge to the satisfaction of the Secretary the duties required by Title 23;

WHEREAS, government-wide uniform administrative requirements for Federal awards authorize a Federal agency to apply specific conditions associated with awards for Federal assistance in accordance with 2 CFR 200.207 based upon risks of financial stability, quality of management systems, history of performance, and ability to effectively implement federal requirements;

WHEREAS, the PRHTA must have adequate procedures and internal controls relating to Federal-aid highway project and program delivery, including billing procedures, and must institutionalize measures adequate for construction of various highway and bridge improvement projects, and other activities eligible for funding under Title 23;

WHEREAS, the PRHTA was previously designated as a "high risk grantee" under 49 CFR §18.12(a), the government-wide uniform grant requirements in effect in 2005, on August 11, 2005, to address deficiencies in the PRHTA program administration and to safeguard Federal funds;

WHEREAS, after the passage of time and improvements to project delivery, the PRHTA requested that its "high risk" designation status be removed, and the FHWA removed that designation on April 21, 2008;

WHEREAS, given the Commonwealth's recent economic challenges and other systemic factors, many PRHTA contractors have not been timely paid, and needed projects have not been adequately or efficiently advanced to and through construction;

WHEREAS, 23 U.S.C. § 308(a) authorizes the FHWA to perform engineering and other services in connection with the survey, design, construction, and improvements of highways for other Government or State cooperating agencies, including the PRHTA;

WHEREAS, the FHWA, by and through its eastern Federal Lands Highway Division (EFLHD), may enter into partnership and interagency agreements among Federal and State transportation agencies, including the PRHTA, to assist those entities in delivering highway and bridge projects, and successfully assisted the District of Columbia and other States in cooperatively advancing critical surface transportation projects;

WHEREAS, the FHWA Puerto Rico Division is delegated responsibility for administrative, financial and project implementation and management oversight of the Puerto Rico Highway program in furtherance of 23 U.S.C. §302, and works cooperatively with the PRHTA in accordance with 23 CFR §1.3 to advance the Puerto Rico Highway program in the Commonwealth;

WHEREAS, this MOU seeks to establish the roles, responsibilities and procedures by which the FHWA by and through its Puerto Rico Division office, the PRHTA, and EFLHD, will cooperate to facilitate the PRHTA's compliance with the duties imposed by 23 U.S.C §302 with regard to project and program delivery in the Commonwealth of Puerto Rico; and

WHEREAS, the Parties intend to be fully bound by the terms and conditions set forth herein.

**NOW THEREFORE** pursuant to the authority in 23 U.S.C. §§302, 308, and 315; 2 CFR §200.205, 2 CFR§.207; and 23 CFR §1.3 and §1.36, and in consideration of the mutual promises herein expressed, the Parties hereby agree as follows:

## **Section I: Federal-aid Billing Procedures**

1. Within 30 days of the Effective Date, the PRHTA shall revise and submit to the FHWA its billing processes to ensure prompt payment to contractors. At minimum, the revised process will include, but not be limited to, the following in accordance with the schedule specified in paragraph I.2:
  - a. Paying all contractors by electronic funds transfer (EFT);
  - b. Paying all contractors within 40 days of receipt of invoices;
  - c. Tracking the status of payments using an electronic method that is acceptable and accessible to the FHWA; and
  - d. Paying all contractors on the first business day after funds are received from the FHWA.
2. Within 15 days of the FHWA concurrence, the PRHTA will implement the revised procedures specified in paragraphs I.1.a-c. After successfully implementing these revised procedures for at least 30 days, the PRHTA shall submit a certification of compliance with the procedures specified in paragraphs I.1.a-c to the FHWA. The FHWA shall promptly review this certification. Once the FHWA determines that the PRHTA's revised billing process has been successfully implemented for at least 30 days, the PRHTA may begin to bill the FHWA on a cost-incurred basis in lieu of a reimbursement basis. Upon implementation of the FHWA payment based on a cost-incurred basis, the PRHTA will implement the revised procedure in paragraph I.1.d and pay all contractors on the first business day after funds are received from the FHWA.
3. The FHWA will monitor the revised billing procedures and reserves the right to revert back to a reimbursement payment method if the PRHTA does not maintain compliance with all four elements of the revised procedures listed in paragraphs I.1.a-d above.

## **Section 11: Toll Credits**

1. Within 21 days of the Effective Date, the FHWA will: (a) validate that the PRHTA's existing toll credit balance complies with current FHWA guidance (the current guidance at the time of execution of this MOU is "Interim Guidance- Toll Credit for Non-Federal Share, November 20, 2015"), (b) identify the amount of toll credits available for use by the PRHTA, and (c) identify modifications that the PRHTA must make to its processes for approving, tracking and reconciling toll credit usage.
2. The PRHTA shall promptly implement all modifications to its processes for approving, tracking and reconciling toll credits as identified by the FHWA and submit a report and certification to the FHWA demonstrating that it has implemented these modifications.
3. The FHWA shall promptly review the revised toll credit processes and report and certification submitted by the PRHTA under paragraph II.2. Once the FHWA determines that the PRHTA's revised processes will ensure that toll credits are properly approved, tracked and reconciled, the PRHTA may begin to retroactively apply toll

credits in lieu of the cash match the PRHTA previously agreed to on existing Federal-aid projects for costs that have yet to be billed. the PRHTA will be able to apply additional Federal-aid funds to projects where toll credits have been retroactively applied.

### **Section III: Organizational Capacity Development**

1. Within 60 days of the Effective Date, the PRHTA shall develop a request for proposal (RFP) to procure a management consultant to assist the PRHTA to attain compliance with 23 U.S.C §302 and 23 CFR §630.106 to implement the project development process required, which is eligible for reimbursement in accordance with 2 CFR §200.207(b)(5). The scope of work required by the RFP shall include, but not be limited to:
  2.
    - a. Reviewing and developing recommendations to streamline the project billing process that commences with the submission of a monthly estimate by the resident Engineer and concludes with the entry of the monthly bill in the Fiscal Management Information System (FMIS), FMIS5.0 (formerly RASPS). The review and recommendations will be consistent with the provisions of Section 1 of this MOU.
    - b. Reviewing the effectiveness of the PRHTA's current project delivery resources and organizational structure to identify and recommend changes to sustain an efficient and effective project delivery structure for the PRHTA;
    - c. Assisting the PRHTA to develop a new quality assurance process with performance metrics for the project development process from project planning to project closeout, including but not limited to:
      - (i) State Transportation Improvement Program (STIP) project selection criteria and STIP amendment/ revision process. The review and recommendations will be consistent with recent revisions on the Transportation Asset Management Plan;
      - (ii) Standard requirements for the development of Plans, Specifications, and Estimates (PS&E);
      - (iii) Contract time determination;
      - (iv) Engineer's estimate development; and
      - (v) Construction management process;
    - d. Reviewing the PRHTA's current contract standard language, standard plans, design directives, and specifications to identify and recommend changes to achieve compliance with applicable federal laws and regulations;
    - e. Effectively integrating construction feedback into the project development process;
    - f. Reviewing and identifying applicable Commonwealth laws or regulations that are impediments to efficient project delivery;
    - g. Reviewing existing standard operating procedures (SOPs) and assisting the PRHTA to develop effective SOPs for the project development process. The review and recommendations will be consistent with SOP revisions required as per the FHWA/PRHTA Stewardship Agreement;

- h. Developing a training program including core competencies for employee positions that have project delivery responsibilities;
  - i. Assisting the PRHTA in integrating all planning documents into the project development process;
  - j. Establishing a schedule to complete the management and process review; and
  - k. Preparing a report containing the consultant's findings and recommendations.
3. Upon the FHWA's acceptance of the RFP, the PRHTA shall issue the RFP. Within 90 days of issuance of the RFP, the PRHTA shall award a contract and hire a management consultant who will deliver the terms of the RFP.
4. The RFP will require a consultant report with recommendations finalizing the review within a specified time frame established under the RFP. Within 60 days of receipt of the management consultant's final report and recommendations, the PRHTA shall submit to the FHWA a schedule for implementation of the management consultant's recommendations, including an explanation and justification for which recommendations, if any, the PRHTA does not intend to make. Upon the FHWA's acceptance of this schedule, the PRHTA shall implement the management consultant's recommendations in accordance with this schedule.
5. If the PRHTA fails to award a contract to retain the management consultant under paragraph III.2, fails to develop a schedule for implementation of the management consultant's recommendations under paragraph III.3, or fails to implement the management consultant's recommendations consistent with that schedule under paragraph III.3, then the FHWA, consistent with its authority under 23 CFR§1.36, may take appropriate action, including no longer authorizing the PRHTA to continue delivering the Puerto Rico Highway program in accordance with the Stewardship and Oversight Agreement dated June 25, 2015.

#### **Section IV: Expediting Project Delivery**

1. Within 30 days of the Effective Date, the PRHTA shall submit to the FHWA a report identifying the reasons for the delay for every project that the PRHTA has obligated, but for which less than five percent of funds have been expended since the date a recorded obligation existed. This report should also contain a plan of action to address the steps to be undertaken by the PRHTA to complete each project and what resources are needed from the FHWA for each project. Upon receipt of this report, the FHWA will develop a plan of action as to how to support the needs identified by the PRHTA to address the identified project delivery issues. The FHWA's assistance could range from quicker review of change orders to EFLHD temporarily assisting in administering priority projects that have yet to proceed to bid letting or that are candidates for design-build contract award.
2. Within 60 days of the Effective Date, the PRHTA shall notify the FHWA that it has issued a RFP to procure improved systems, such as improved e-mail communication, an electronic project monitoring system, and any necessary improvements to the financial billing system to comply with Section I of this MOU, in order to reduce the PRHTA's obligated but

unexpended balances. Within 10 days of FHWA's receipt of the PRHTA's notice, the FHWA shall authorize up-front participation in the allocable equipment upgrade costs, based on costs incurred, and approve Federal-aid program funds to cover the costs of such systems that are allocable to the Federal-aid Puerto Rico Highway program. Using this authorization, the PRHTA shall issue a contract to procure such systems. If, within 180 days of procuring and implementing the improved systems, the PRHTA fails to demonstrate reasonable progress to reduce unexpended balances on authorized projects, then, consistent with its authority under 23 CFR § 630.106(a)(6) to adjust obligations, the FHWA may take appropriate action, including deobligating funds on projects that have not progressed.

3. Within 10 days of the February 2016 FHWA/PRHTA Project Obligation Workshop, the PRHTA shall develop and submit to the FHWA a schedule with milestones (including a project schedule) to accelerate obligation of its annual Federal-aid allocation to ensure all funds are properly obligated before August redistribution of Federal-aid obligation limitation. Upon receipt of this schedule, the FHWA will continue to dedicate appropriate resources to assist the PRHTA to assure timely obligation of funds.

## **Section V: Other Terms**

1. Effective Date: The Effective Date of this MOU shall be the date it is signed by the FHWA.
2. If the PRHTA fails to meet the commitments set forth in Sections I-IV above, the FHWA reserves the authority to determine that the PRHTA is not suitably equipped and organized to carry out the Puerto Rico Highway program in accordance with the requirements in 23 U.S.C. §302 and to take such further action as may be appropriate under 23 CFR §1.36.
3. This MOU shall remain in effect until the FHWA notifies the PRHTA that the PRHTA has satisfied all of its commitments in Sections I-IV above. As long as the PRHTA continues to meet the provisions outlined in Section I, the FHWA will continue to pay Federal-aid on a cost-incurred basis.
4. This MOU may be modified only by the written consent of the parties.

IN WITNESS THEREOF, the Parties hereto have caused this MOU to be executed by their duly authorized representatives.

Puerto Rico



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Signature of Authorized Representative

Alejandro Garcia Padilla

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Typed (Printed) Name of Signer

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