

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

THE GOVERNMENT DEVELOPMENT BANK
FOR PUERTO RICO,

Applicant.

PROMESA
Title VI

Case No. 18-1561-LTS

**STIPULATED WITHDRAWAL OF FIDELITY AND DEPOSIT COMPANY OF
MARYLAND’S AND ZURICH AMERICAN INSURANCE COMPANY’S
SUPPLEMENTAL AND SUPERSEDING OBJECTION
TO QUALIFYING MODIFICATION (DOCKET NO. 203)**

TO THE HONORABLE COURT:

WHEREAS, on August 10, 2018, the Government Development Bank for Puerto Rico (“GDB”) and the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”) filed their *Application, Pursuant to Section 601(M)(1)(D) of the Puerto Rico Oversight, Management, and Economic Stability Act, for Approval of the Qualifying Modification for GDB*. ECF No. 1.

WHEREAS, on August 20, 2018, Fidelity and Deposit Company of Maryland and Zurich American Insurance Company (jointly, “F&D/Zurich”) filed their *Notice of Intention to Object to the Qualifying Modification*. ECF No. 18.

WHEREAS, on September 21, 2018, F&D/Zurich filed their *Preliminary Objection to the Qualifying Modification*. ECF No. 160.

WHEREAS, on October 23, 2018, F&D/Zurich filed their *Supplemental and Superseding Objection to Qualifying Modification* (“F&D/Zurich’s Objection to the Qualifying Modification”). ECF No. 203.

WHEREAS, subsequent to conducting discovery and to the filing of F&D/Zurich’s Objection to the Qualifying Modification, counsel for F&D/Zurich and GDB/AAFAF (the

“Parties”) have met-and-conferred in an effort to resolve the matters raised in F&D/Zurich’s Objection to the Qualifying Modification.

WHEREAS, as a result of those discussions, the Parties have arrived at a mutually agreeable resolution of the matters raised in F&D/Zurich’s Objection to the Qualifying Modification.

NOW, THEREFORE, IT IS HEREBY STIPULATED AS FOLLOWS:

1. F&D/Zurich hereby voluntarily withdraw their Objection to the Qualifying Modification in ECF No. 203. Such withdrawal is without prejudice to litigating the merits of F&D/Zurich’s alleged claim against GDB in another forum and is made subject to the representations and reservations made below.
2. As set forth in the Restructuring Support Agreement executed as of May 15, 2017 by and among the Government Development Bank for Puerto Rico (“GDB”), the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”) and the Supporting Bondholders, as defined in such Agreement (hereinafter, as amended “RSA”), GDB shall maintain in a separate account a Vendor Claim Reserve for payment of claims by parties that provided goods and services to GDB in the ordinary course of business and which, as of the Closing Date (as that term is defined in the RSA), are disputed by GDB or for which payment has not yet become due (the “Open or Disputed Vendor Claims”, as defined in the RSA). *See generally*, Docket No. 5, Exhibits A-I, particularly at Docket No. 5-3, p. 39 and Docket Nos. 5-7, p. 25.
3. The Vendor Claim Reserve is for approximately \$15 million. Of those \$15 million, \$9,045,000.00 were included on account of a disputed claim made by L.P.C. & D., Inc. (“LPCD”) – a contractor that worked on the Comunidad Río Bayamón Norte-

Urban Infrastructure project (the “CRB Project”) – for retainage in the amount of ten (10) percent of the CRB Project’s contract price (“the Retainage”) which has not been disbursed by GDB.

4. Of the amounts in the Vendor Claim Reserve, at least \$9,045,000.00 shall be maintained at GDB until the earliest of the following has occurred: (1) all Open or Disputed Vendor Claims related to the Retainage have been resolved, including but not limited to any claims by F&D/Zurich to any part of such amount; or (2) GDB initiates an interpleader action depositing any or all funds constituting the Retainage in a court of competent jurisdiction.
5. GDB acknowledges that it has not disbursed the Retainage and that LPCD has made a claim for its payment. GDB also acknowledges that LPCD has made a claim in connection with the CRB Project. Such claim is an Open or Disputed Vendor Claim. For the avoidance of doubt, GDB reserves all arguments and rights in connection with such claim, and nothing contained in this Stipulation shall be deemed a waiver of GDB’s defenses and arguments in opposition to LPCD’s claim.
6. GDB further acknowledges that F&D/Zurich allege that: (i) at the request of LPCD, F&D/Zurich issued payment and performance bonds for the CRB Project pursuant to which F&D/Zurich has paid claims owed by LPCD to its subcontractors and suppliers in the total amount of \$1,295,731.62; (ii) there are approximately \$979,000.00 in additional claims for work performed on the CRB Project which are unpaid by LPCD, and (iii) as a result of LPCD’s default in another government project, the Modernization of the Manuel A. Pérez Public Housing Project (the “MAP Project”), for which F&D/Zurich issued payment and performance bonds on

behalf of LPCD, F&D/Zurich have performed on behalf of LPCD and suffered losses which as of November 2, 2018, total \$6,412,561.11.

7. GDB further acknowledges that F&D/Zurich have alleged that they are the beneficiaries of subrogation rights and/or alleged assignments of rights from LPCD which transfers of interest entitle F&D/Zurich to receive payment from the Retainage for all of the losses that they have sustained including those related to the CRB Project and the MAP Project. In particular, F&D/Zurich have claimed that GDB owes them as of today, on account of their alleged subrogation or assignment rights, the sum of \$7,708,292.73. To the extent LPCD is entitled to any Retainage funds, an issue in dispute, and F&D/Zurich succeed in establishing their subrogation and/or assignment rights, F&D/Zurich may obtain payment from the Vendor Claim Reserve. For the avoidance of doubt, GDB and F&D/Zurich each reserve all arguments and rights in connection with both the underlying LPCD claim and F&D/Zurich's claim, and nothing contained in this Stipulation shall be deemed a waiver of GDB's or F&D/Zurich's claims, defenses and arguments with respect to each other and with respect to LPCD's claims.
8. GDB acknowledges and accepts that, in any existing or future action brought by F&D/Zurich regarding the matters addressed in F&D/Zurich's Objection to the Qualifying Modification, or related to the CRB Project or the MAP Project, in any court or forum of competent jurisdiction, GDB will not raise any defenses or arguments as to it being impeded by Executive Orders 2016-10 and 2016-14, to disburse funds from the Vendor Claim Reserve in light of this Qualifying Modification or any Order entered by this Court in this Title VI Proceeding.

9. The voluntary withdrawal of its objection to the Qualifying Modification shall not affect F&D/Zurich's alleged substantive rights regarding their claims against GDB. For the avoidance of doubt, F&D/Zurich reserve all rights in connection with any claims outside of the above-captioned proceeding, and nothing contained in this Stipulation shall be deemed as a waiver of F&D/Zurich's alleged right to make any claim against (i) LPCD for monies owed by LPCD to F&D/Zurich, or (ii) against GDB directly for the Retainage allegedly due to LPCD. As set forth above, GDB likewise reserves all rights to dispute and/or defend from any such claim.

IT IS SO STIPULATED.

DATED: November 2, 2018

Respectfully Submitted

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