



COMMUNITY DEVELOPMENT BLOCK GRANT – DISASTER RECOVERY
(CDBG-DR)

**AMENDMENT A to the
SUBRECIPIENT AGREEMENT
BETWEEN THE PUERTO RICO DEPARTMENT OF HOUSING
AND THE
MUNICIPALITY OF JAYUYA**



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This **AMENDMENT A TO THE SUBRECIPIENT AGREEMENT** (hereinafter, the "AMENDMENT A") is entered into this 27 day of January, 2021, by and between the **PUERTO RICO DEPARTMENT OF HOUSING** (the "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" (the "Organic Act"), with principal offices at 606 Barbosa Ave., San Juan, Puerto Rico, represented herein by its Secretary, Hon. William O. Rodríguez Rodríguez, Esq., of legal age, attorney, single, and resident of San Juan, Puerto Rico; and the **MUNICIPALITY OF JAYUYA** (the "SUBRECIPIENT"), a Municipality with principal offices at Jayuya, Puerto Rico, represented herein by its Mayor, Jorge L. González Otero, of legal age, married, and resident of Jayuya, Puerto Rico, collectively the "PARTIES".

I. RECITALS AND GENERAL AWARD INFORMATION

WHEREAS, on October 1, 2020, the PRDOH and the SUBRECIPIENT executed a Subrecipient Agreement, Contract Number 2021-DR0019 (hereinafter, "SUBRECIPIENT AGREEMENT") for \$1,044,448.18 for a period of performance ending in October 1, 2023; for the SUBRECIPIENT to undertake activities under the **City Revitalization Program** (hereinafter, the "PROGRAM"). The focus of the PROGRAM is to establish a fund for municipal governments and eligible entities to enable a variety of critical recovery activities aimed at reinvigorating downtown areas, urban centers, and key community corridors;

WHEREAS, as per Section IX (A) of the SUBRECIPIENT AGREEMENT, the SUBRECIPIENT AGREEMENT may be amended in writing and signed by a duly authorized representative of each party. Nonetheless, the amendment shall not invalidate the SUBRECIPIENT AGREEMENT, nor release the parties from their obligations under the SUBRECIPIENT AGREEMENT;

WHEREAS, it is the intention of the parties to modify and amend certain terms and conditions of the SUBRECIPIENT AGREEMENT;

WHEREAS, this AMENDMENT A is not intended to affect, nor does it constitute an extinctive novation of the obligations of the parties under the SUBRECIPIENT AGREEMENT but it is rather a modification and amendment of certain terms and conditions of the SUBRECIPIENT AGREEMENT;

WHEREAS, this AMENDMENT A does not affect the term nor the overall amount of the SUBRECIPIENT AGREEMENT.

WHEREAS, the PRDOH has the legal power and authority, in accordance with its enabling statute, the Organic Act, as amended, *supra*, the federal laws and regulations creating and allocating funds to the CDBG-DR program, and the current Action Plan, to issue and award the subaward, enter and perform under the executed SUBRECIPIENT AGREEMENT; and,

WHEREAS, the SUBRECIPIENT duly adopted the Resolution dated August 31, 2020 and with Identification No. 06, Series 2020-2021, that authorized the SUBRECIPIENT to enter into the SUBRECIPIENT AGREEMENT with the PRDOH, and by signing the SUBRECIPIENT AGREEMENT, the SUBRECIPIENT assured PRDOH that it would comply with all the requirements described in the aforementioned agreement;

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NOW THEREFORE, in consideration of the mutual promises and the terms and conditions set forth in the SUBRECIPIENT AGREEMENT, the PRDOH and the SUBRECIPIENT agree to execute this AMENDMENT A subject to the following:

TERMS AND CONDITIONS

II. ATTACHMENT

The information included in this AMENDMENT A serves the purpose of modifying and amending certain terms and conditions under the SUBRECIPIENT AGREEMENT. All other provisions of the SUBRECIPIENT AGREEMENT shall continue to be in full force and effect.

III. SCOPE OF AMENDMENT

The PRDOH and the SUBRECIPIENT have agreed to enter into this AMENDMENT A with the purpose of modifying certain sections of the existing SUBRECIPIENT AGREEMENT.

IV. AMENDMENTS¹

- A. The parties intend to amend **SECTION III. Scope of Work, E. Nonperformance Standard** clause of the SUBRECIPIENT AGREEMENT, with the following:

E. Nonperformance Standard

*If at the end of the **six (6) months** from the Effective Date, as defined in **Section V** of this Agreement, the Program activity has not begun or at any time during the term the Program activity has not accomplished the performance objectives set forth by the PRDOH in **Exhibit B** ("Timelines and Performance Goals"), the PRDOH may, at its sole discretion, terminate this Agreement, de-obligate funds made available under this agreement, and/or recapture funds previously expended by the Subrecipient under this agreement from non-federal funds. No contract extensions shall be granted unless the Subrecipient can document circumstances beyond its control that prevented start of the activity. The PRDOH shall review the properly filed and documented circumstances which are alleged to have prevented the initiation of activity and exclusively reserves the right to decide if an extension is warranted, relative to the reasons stated as well as the prevailing circumstances.*

- B. The parties intend to amend **Section VI. Budget, C. Program Income** clause of the SUBRECIPIENT AGREEMENT, with the following:

C. Program Income

PRDOH reserves the right to authorize the Subrecipient to retain Program Income² to be used in eligible program activities as described in this

¹ For easier review, Amendments will appear in *italics* throughout the document.

² Footnote related to the amended clause that appears as well in the original SUBRECIPIENT AGREEMENT:

As defined in section VI (A) (19) (a) of the HUD Notice 83 Fed. Reg. 5844, 5856 (February 9, 2018, as may be amended by HUD), Program Income is:

[...] gross income generated from the use of CDBG-DR funds, except as provided in subparagraph (d) of this paragraph, and received by a State or a Subrecipient of a State."

[...]

Program income includes, but is not limited to, the following: (a) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG-DR funds; (b) Proceeds from the disposition of equipment purchased with CDBG-DR funds; (c) Gross income from the use or rental of real or personal property acquired by a State, local government, or Subrecipient thereof with CDBG-DR funds, less costs incidental to generation of the income (i.e., net income); (d) Net income from the use or rental of real property owned by a State, local government, or Subrecipient thereof, that was constructed or improved with CDBG-DR funds; (e) Payments of principal and interest on loans made using CDBG-DR funds; (f) Proceeds from the sale of loans made with CDBG-DR funds; (g) Proceeds from the sale of obligations secured by loans made with CDBG-DR funds; (h)

Agreement. The Subrecipient shall notify PRDOH, within **twenty four (24) hours** of receipt, of any Program Income generated by activities carried out with CDBG-DR funds made available under this Agreement. All Program Income (as defined at 24 C.F.R. § 570.500) generated by activities carried out with the CDBG-DR Funds must be returned to PRDOH if retention of such is not previously authorized by PRDOH. Program Income is subject to all applicable CDBG-DR laws, regulations and PRDOH's policies and procedures for so long as it exists. Any interest earned on cash advances from the U.S. Treasury or interest paid on CDBG funds held in a revolving fund account is not Program Income and shall be remitted promptly to the PRDOH for transmittal to the U.S. Treasury no less frequently than annually.

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All Program assets, other than Program Income (property, equipment, etc.), if any, shall revert to PRDOH upon termination of this Agreement in accordance with applicable Federal, laws, regulations, HUD Notices, policies, and guidelines.

PRDOH will later notify the Subrecipient in writing the applicable procedures for the return or reversion of Program Income and Program assets to the PRDOH, and such notification shall be deemed incorporated by reference to this Agreement.

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- C. The parties intend to amend **SECTION IX. AMENDMENT AND TERMINATION, B. Suspension or Termination, 7. Period of Transition** clause of the SUBRECIPIENT AGREEMENT, with the following:

7. Period of Transition

Upon termination of this Agreement, and for **ninety (90) consecutive calendar days** thereafter (the Transition Period), Subrecipient agrees to make himself available to assist the PRDOH with the transition of services assigned to Subrecipient by the PRDOH. Subrecipient shall provide to the PRDOH the assistance reasonably requested to facilitate the orderly transfer of responsibility for performance of the Services to the PRDOH or a third party designated by the PRDOH. PRDOH reserves the right to provide for the execution of a Transition Services Agreement for the Transition Period. In such instance, the Subrecipient will be paid at a reasonable, agreed upon, hourly rate for any work performed for the PRDOH during the Transition Period. Moreover, during that Transition Period, all finished or unfinished records (files, data, work product) connected with this Agreement will be turned over to PRDOH.

- D. The parties intend to amend **SECTION X. COMPLIANCE WITH FEDERAL STATUTES, REGULATIONS AND THE TERMS AND CONDITIONS OF THE FEDERAL AWARD AND ADDITIONAL PRDOH REQUIREMENTS, P. Single Audit** clause of the SUBRECIPIENT AGREEMENT, with the following:

P. Single Audit

The Subrecipient must be audited as required by 2 C.F.R. part 200, subpart F, when the Subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in 2 C.F.R. §200.501 - Audit requirements. Once said threshold is reached or exceeded, the

Interest earned on program income pending disposition of the income, including interest earned on funds held in a revolving fund account; (i) Funds collected through special assessments made against nonresidential properties and properties owned and occupied by households not low- and moderate-income, where the special assessments are used to recover all or part of the CDBG-DR portion of a public improvement; (j) Gross income paid to a State, local government, or a Subrecipient thereof, from the ownership interest in a for profit entity in which the income is in return for the provision of CDBG-DR assistance.

Subrecipient shall notify the PRDOH and shall report that event in the corresponding monthly progress report, as provided in Part VI - Performance, Monitoring, and Reporting, Subpart B (Reporting) of this Agreement.

The Subrecipient shall procure or otherwise arrange for the audit to be conducted for that year, as required in 2 C.F.R. §200.501(a)-(b); moreover, that it is properly performed and submitted when due in accordance with provisions that include but are not limited to those set forth in 2 C.F.R. §200.512 - Report submission, as stated in 2 C.F.R. §200.508(a) – Auditee responsibilities.

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Among other relevant provisions, the Subrecipient shall comply with: (a) the Electronic submission of data and reports to the Federal Audit Clearinghouse (FAC) (2 C.F.R. § 200.512(d)) and; (b) ensuring that reports do not include protected personally identifiable information as set forth in 2 C.F.R. § 200.512(a)(2)).

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- E. The parties intend to amend **SECTION X. COMPLIANCE WITH FEDERAL STATUTES, REGULATIONS AND THE TERMS AND CONDITIONS OF THE FEDERAL AWARD AND ADDITIONAL PRDOH REQUIREMENTS, T. Nondiscrimination** clause of the SUBRECIPIENT AGREEMENT, with the following:

T. Nondiscrimination:

The Subrecipient shall comply with 24 C.F.R. part 6, which implements the provisions of section 109 of title I of the Housing and Community Development Act of 1974 (Title I) (42 U.S.C. § 5309). Section 109 provides that no person in the United States shall, on the ground of race, color, national origin, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance.

The Subrecipient shall adhere to the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-6107) (Age Discrimination Act) and the prohibitions against discrimination on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) (Section 504). Section 109 of the Housing and Community Development Act of 1974 makes these requirements applicable to programs or activities funded in whole or in part with CDBG-DR funds. Thus, the Subrecipient shall comply with regulations of 24 C.F.R. part 8, which implement Section 504 for HUD programs, and the regulations of 24 C.F.R. part 146, which implement the Age Discrimination Act for HUD programs.

The Subrecipient shall ensure that all CDBG-DR activities conducted by itself or its contractors are consistent with the applicable federal and local legal provisions, regulations, and policies that prohibit discrimination on the basis of race, creed, color, national origin, religion, sex, disability, familial status, actual or perceived sexual orientation or gender identity, marital status, or age, as established in the CDBG-DR Fair Housing and Equal Opportunity (FHEO) Policy for CDBG-DR Programs.³

- F. The parties intend to amend **SECTION XI. CDBG-DR POLICIES AND PROCEDURES** in order to clarify that the original reference to the Subrecipient Management Guide

³ Footnote added to the amended clause:

Follow the link for document access at the CDBG-DR Website: <https://cdbg-dr.pr.gov/en/download/fair-housing-and-equal-opportunity-fheo-policy-for-cdbg-dr-programs/>.

is no longer accurate. The beforementioned policy was revised and finally adopted by the name of Subrecipient Management Policy. The amended clause shall read as follows:

XI. CDBG-DR POLICIES AND PROCEDURES

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In addition to what is established in this Agreement, the Grantee shall comply with all CDBG-DR program specific and general policies and procedures, including, but not limited to, the Subrecipient Management Policy, OS&H Guideline, MWBE Policy, Procurement Manual and Contractual Requirements, URA & ADP Guidelines, Cross Cutting Guidelines, AFWAM Policy, Section 3 Policy, Personally Identifiable Information, Confidentiality, and Nondisclosure Policy and Conflict of Interest and Standards of Conduct Policy, as found in the CDBG-DR Website (www.cdbg-dr.pr.gov), which are herein included and made integral part of this Agreement, as they may be updated from time to time, and reporting requirements as established by the PRDOH.

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- G. The parties agree to incorporate the following clause as Section XII of the SUBRECIPIENT AGREEMENT:

XII. FORCE MAJEURE

In the event of a fire, flood, earthquake, natural disaster, hurricane, riot, act of governmental authority in its sovereign capacity, 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 Subrecipient shall be liable to the other party for nonperformance during the conditions created by such event.

The Subrecipient shall notify, as soon as possible, the PRDOH of the occurrence of the Force Majeure event and describe in reasonable detail, the nature of the Force Majeure event.

- H. The parties agree that the existing Section XII of the SUBRECIPIENT AGREEMENT shall be renumbered to become **Section XIII. INDEPENDENT CONTRACTOR**. Moreover, the parties acknowledge that all sections thereafter shall be renumbered sequentially as follows:

XIV. ASSIGNMENT OF RIGHTS

[...]

XV. SEVERABILITY

[...]

XVI. SECTION HEADINGS AND SUBHEADINGS

[...]

XVII. CONSOLIDATIONS, MERGERS, CHANGE OF NAME, AND DISSOLUTIONS

[...]

XVIII. NON-WAIVER

[...]

XIX. BANKRUPTCY

[...]

XX. GOVERNING LAW: JURISDICTION

[...]

XXI. COMPLIANCE WITH LAW

[...]

XXII. MEMORANDUM NO. 2017-001; CIRCULAR LETTER 141-17 OF THE OFFICE OF THE CHIEF OF STAFF OF THE GOVERNOR (SECRETARÍA DE LA GOBERNACIÓN) & THE OFFICE OF MANAGEMENT AND BUDGET (OFICINA DE GERENCIA Y PRESUPUESTO)

[...]

XXIII. SUBROGATION

[...]

XXIV. COMPTROLLER REGISTRY

[...]

XXV. ENTIRE AGREEMENT

[...]

XXVI. FEDERAL FUNDING

[...]

XXVII. RECAPTURE OF FUNDS

[...]

XXVIII. OVERPAYMENT

[...]

XXIX. COUNTERPARTS

[...]

XXX. SURVIVAL OF TERMS AND CONDITIONS

[...]

- I. The parties intend to amend the renumbered and renamed **Section XVII. CONSOLIDATIONS, MERGERS, CHANGE OF NAME, AND DISSOLUTIONS** of the SUBRECIPIENT AGREEMENT, with the following:

A. Consolidation or Merger

*In the event that the signing party (e.g. Subrecipient, Contractor, or Subcontractor) of the Agreement with the PRDOH moves for a consolidation or merger with another entity (private or public), by its discretion or otherwise, written notice of such decision or event shall be delivered to the PRDOH **at least fifteen (15) days prior to the effective date** of the consolidation or merger. The notice shall include, but not limited to, a description of: the expected effective date of the consolidation or merger; name of each of the constituent entities moving to consolidate or merge into the single resulting or surviving entity; the proposed name of the resulting entity (in case of a consolidation) or the name of the surviving entity (in case of a merger) if necessary; reference to the projected capacity of the resulting or surviving entity to comply with the terms, conditions, obligations, tasks, services, and performance goals or requirements included in the Agreement as well as its Exhibits or Attachments; and a brief summary of the proposed plan to achieve the transition of duties (Scope of Work or Scope of Services), tasks, and performance goals or requirements to the resulting or surviving entity.*

Upon the consolidation or the merger becoming effective, and supporting evidence of such event is notified to PRDOH, execution of an Amendment to the Agreement may follow. The Amendment would include, but not limited to, modifications to the clauses that refer to the identity, personal circumstances, address, and any other information related to the signing party deemed relevant by PRDOH for the execution of the Amendment. **No amendment to the Agreement will be necessary if the Subrecipient, Contractor, or Subcontractor becomes the surviving entity following a merger.**

Failure to comply with any of the before mentioned conditions, may result in the activation of the termination clauses provided in the Agreement.

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B. Change of Name

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In the event that the signing party (e.g. Subrecipient, Contractor, or Subcontractor) of the Agreement with the PRDOH initiates a change of name process, written notice of such decision or event shall be delivered to the PRDOH **at least fifteen (15) days** prior to the effective date of such event. The notice shall include, but not limited to, a description of: the expected effective date of the change of name; the proposed name; inform of any change of address; and reference of any change in the capacity of the entity to comply with the terms, conditions, obligations, tasks, services, and performance goals or requirements included in the Agreement, as well as its Exhibits or Attachments.

Upon the change of name becoming effective, and supporting evidence of such event is notified to PRDOH, execution of an Amendment to the Agreement may follow. The Amendment would include, but not limited to, modifications to the clauses that refer to the identity, personal circumstances, address, and any other information related to the signing party deemed relevant by PRDOH for the execution of the Amendment.

Failure to comply with any of the before mentioned conditions, may result in the activation of the termination clauses provided in the Agreement.

C. Dissolution

In the event that the signing party (e.g. Subrecipient, Contractor, or Subcontractor) of the Agreement with the PRDOH moves for dissolution of the entity, written notice of such decision or event shall be delivered to the PRDOH **at least fifteen (15) days** prior to the effective date of such event. The notice shall include, but not limited to, a description of the expected effective date of the dissolution; and contact information of one or more of its directors, officials or agents. Upon dissolution becoming effective, and supporting evidence of such event is notified to PRDOH, termination of the Agreement will follow. Consequently, the signing party acknowledges and agrees to provide to the PRDOH, after termination of the Agreement, the assistance reasonably requested to facilitate the orderly transfer of responsibility for performance of the tasks or services to the PRDOH or a third party designated by the PRDOH. Moreover, all finished or unfinished records (files, data, work product) connected with this Agreement will be turned over to PRDOH following the Agreement termination.

- J. The parties intend to amend renumbered **Section XXX. SURVIVAL OF TERMS AND CONDITIONS**, in order to incorporate the new scope of the beforementioned Section XVII. CONSOLIDATIONS, MERGERS, CHANGE OF NAME, AND DISSOLUTIONS. Section XXX will read as follows:

The terms and conditions of this Agreement related to the following subjects shall survive the termination or expiration of this Agreement: interpretive

provisions; consideration; warranties; general affirmations, federal assurances, federal and state certifications; CDBG-DR and state funding, recapture of CDBG-DR and/or state funds, overpayment of CDBG-DR and/or state funds; ownership and intellectual property, copyright; records retention methods and time requirements; inspection, monitoring and audit; confidentiality; public records; indemnification and liability; infringement of intellectual property rights; independent contractor relationship; compliance with laws; notices; choice of law and venue; severability; dispute resolution; consolidations, merger, change of name, and dissolution. Terms and conditions that, explicitly or by their nature, evidence the Parties' intent that they should survive the termination or expiration of this Agreement shall so survive.

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V. SEVERABILITY

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

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VI. SECTION HEADINGS AND SUBHEADINGS

The section headings and subheadings contained in this AMENDMENT A are included for convenience only and shall not limit or otherwise affect the terms of the SUBRECIPIENT AGREEMENT, and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this AMENDMENT A.

VII. COMPTROLLER REGISTRY

The PRDOH shall remit a copy of this AMENDMENT A to the Office of the Comptroller for registration within **fifteen (15) days** following the date of execution of this AMENDMENT A and any subsequent amendment hereto. The services object of this AMENDMENT A may not be invoiced or paid until this AMENDMENT A has been registered by the PRDOH at the Comptroller's Office, pursuant to Act No. 18 of October 30, 1975, as amended by Act No. 127 of May 31, 2004.

VIII. ENTIRE AGREEMENT

The SUBRECIPIENT AGREEMENT, as amended, constitutes the entire agreement among the PARTIES for the use of funds received under the SUBRECIPIENT AGREEMENT, as amended, and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written among the PARTIES with respect to the SUBRECIPIENT AGREEMENT, as amended.

IX. FEDERAL FUNDING

The fulfillment of the SUBRECIPIENT 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 SUBRECIPIENT AGREEMENT, as amended, must be made in accordance with the SUBRECIPIENT 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.

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IN WITNESS THEREOF, the PARTIES hereto execute this AMENDMENT A in the place and on the date first above written.

PUERTO RICO DEPARTMENT OF HOUSING, CDBG-DR Grantee

William O. Rodríguez Rodríguez

By: William O. Rodríguez Rodríguez (Jan 27, 2021 17:48 AST)

Name: William O. Rodríguez Rodríguez, Esq.

Title: Secretary

SUBRECIPIENT

By: 

Name: Hon. Jorge L. González Otero

Title: Mayor of the Municipality of Jayuya

DUNS Number: 017172623

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JAYUYA-CRP AMENDMENT A

Final Audit Report

2021-01-27

Created:	2021-01-20
By:	Radames Comas Segarra (rcomas@vivienda.pr.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAA2ZhIWhnHqMTCawwUff6cHBDOO4mUmHlp

"JAYUYA-CRP AMENDMENT A" History

-  Document created by Radames Comas Segarra (rcomas@vivienda.pr.gov)
2021-01-20 - 8:04:26 PM GMT- IP address: 24.139.225.178
-  Document emailed to Jorge Gonzalez (alcalde@jayuya.puertorico.pr) for signature
2021-01-20 - 8:09:25 PM GMT
-  Email viewed by Jorge Gonzalez (alcalde@jayuya.puertorico.pr)
2021-01-21 - 5:38:40 PM GMT- IP address: 104.47.65.254
-  Document e-signed by Jorge Gonzalez (alcalde@jayuya.puertorico.pr)
Signature Date: 2021-01-25 - 3:17:19 PM GMT - Time Source: server- IP address: 196.42.50.6
-  Document emailed to William O. Rodríguez Rodríguez (w.rodriguez@vivienda.pr.gov) for signature
2021-01-25 - 3:17:21 PM GMT
-  Email viewed by William O. Rodríguez Rodríguez (w.rodriguez@vivienda.pr.gov)
2021-01-27 - 9:47:53 PM GMT- IP address: 104.47.64.254
-  Document e-signed by William O. Rodríguez Rodríguez (w.rodriguez@vivienda.pr.gov)
Signature Date: 2021-01-27 - 9:48:32 PM GMT - Time Source: server- IP address: 196.28.53.20
-  Agreement completed.
2021-01-27 - 9:48:32 PM GMT