



GOVERNMENT OF PUERTO RICO
Department of Housing



PUERTO RICO DEPARTMENT OF HOUSING
CDBG-DR PROGRAM
CITY REVITALIZATION PROGRAM
SUBROGATION AND ASSIGNMENT AGREEMENT

This **SUBROGATION AND ASSIGNMENT AGREEMENT** ("Agreement") is made and entered into on this 16 day of March, 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, William O. Rodríguez Rodríguez, of legal age, attorney, single, and resident of San Juan, Puerto Rico; and the **MUNICIPALITY OF FAJARDO** (the "Subrecipient"), an Autonomous Municipality, with principal offices at Fajardo, Puerto Rico, represented herein by its Mayor, Jose A. Meléndez Méndez, of legal age, single, and resident of Fajardo, Puerto Rico, collectively the "Parties".

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1. Subrogation and Assignment Relating to Funds Received from the Puerto Rico Department of Housing City Revitalization Program.

(a) On August 8, 2020, the PRDOH and the Subrecipient executed a Subrecipient Agreement, Contract Number 2021-DR0007 for \$1,538,842.21 for a period of performance ending in August 8, 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.

(b) This Agreement is made and entered into in consideration of the commitment by PRDOH to evaluate Subrecipient's application for the award of disaster assistance funds (the "Application") or the Subrecipient's receipt of CDBG-DR disaster recovery funds (the "Grant Proceeds") under the Program being administered by PRDOH.

(c) Subrecipient understands and acknowledges that the Program is subject to the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. §§ 5121-5207 (the "Act") and that, under such Act, the Subrecipient may only receive assistance to the extent that the Subrecipient has a disaster recovery need that is not fully met by insurance or other forms of disaster assistance. Subrecipient further acknowledges that this Agreement is intended to ensure that Subrecipient does not receive duplicate benefits available to the Subrecipient from another source, for the same purposes as the Grant Proceeds provided under the Program, and that, any assistance determined to be duplicative must be deducted from the Program's calculation of the Subrecipient's total need prior to awarding assistance.

(d) Subrecipient hereby subrogates and assigns to PRDOH any and all of Subrecipient's future rights to, and any interest Subrecipient may have in, any reimbursement and all payments received or subsequently received from any grant, loan, insurance policy or policies of any type (each individually, a "Policy" and



collectively, the "Policies"), or under any subsidy, reimbursement or relief program related to or administered by the Federal Emergency Management Agency ("FEMA"), insurance payments, or any other federal, state or local government agency (each, individually, a "Disaster Program" and collectively, the "Disaster Programs") to the extent of all Grant Proceeds paid or to be paid under the Program and that are determined, in the sole discretion of PRDOH or its designated agent, to be a duplication of benefits ("DOB"). Any payments referred to in this paragraph, whether they are from Policies, FEMA, or any other source, and whether or not such amounts are a DOB, shall be referred to herein as "Proceeds," and any Proceeds that are determined to be a DOB shall be referred to herein as "DOB Proceeds."

(e) Subrecipient agrees that, in the event that Subrecipient receives additional Proceeds related to disaster recovery that are not listed on the Duplication of Benefits Certification submitted in connection with the Application, Subrecipient will notify the PRDOH within **ten (10) working days** of receipt of the funds by sending a written notification to cityrevcdbg@vivienda.pr.gov. PRDOH will, in turn determine, in its sole discretion, if such Proceeds constitute DOB Proceeds. If any of the Proceeds are determined to be DOB Proceeds, the Subrecipient shall pay PRDOH the DOB Proceeds, to be disbursed as provided in Section 3 of this Agreement.

2. Cooperation and Further Documentation.

(a) If PRDOH elects to pursue any of the claims Subrecipient has or may have under any Policies, Subrecipient agrees to assist and cooperate with PRDOH. Subrecipient's assistance and cooperation shall include, but shall not be limited to, allowing suit to be brought in Subrecipient's name(s) and providing any additional documentation with respect to such consent, giving depositions, providing documents, producing records and other evidence, testifying at trial, and any other form of assistance and cooperation reasonably requested by the PRDOH. Subrecipient also agrees to assist and cooperate in the attainment and collection of any DOB Proceeds that the Subrecipient would be entitled to under any applicable Disaster Program.

(b) If requested by PRDOH, Subrecipient agrees to execute such further and additional documents and instruments as may be requested to further and better subrogate and assign to PRDOH (to the extent of the Grant Proceeds paid to Subrecipient under the Program) the Policies, any amounts received under the Disaster Programs that are determined to be DOB Proceeds and/or any rights thereunder. Subrecipient further agrees to take, or cause to be taken, all actions and to do, or cause to be done, all things requested by the PRDOH to consummate and make effective the purposes of this Agreement.

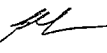
(c) Subrecipient expressly allows and authorizes PRDOH to request information from any company with which Subrecipient holds or held any insurance policy or policies of any type, any other company or entity -public or private- from which the Subrecipient has applied for or is receiving assistance (such as FEMA, or others), or any non-public or confidential information determined by PRDOH, in its sole discretion, to be reasonably necessary to monitor/enforce its interest in the rights subrogated and


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assigned to it under this Agreement, and grant consent to such company or entity to release said information to the PRDOH.

3. Agreement to Turn Over Proceeds; Future Reassignment.

 (a) If Subrecipient (or, to the extent permitted by superior loan documents, any lender to which DOB Proceeds are payable) hereafter receives any DOB Proceeds, Subrecipient agrees to promptly pay such amounts to PRDOH, if Subrecipient received Grant Proceeds under the Program in an amount greater than the amount Subrecipient would have received if such DOB Proceeds had been considered in the calculation of Subrecipient's award.


 (b) In the event that Subrecipient receives or is scheduled to receive any Proceeds not listed on its Duplication of Benefits Certification ("Subsequent Proceeds"), Subrecipient shall pay such Subsequent Proceeds directly to the PRDOH, and PRDOH will determine the amount, if any, of such Subsequent Proceeds that are DOB Proceeds ("Subsequent DOB Proceeds"). Subsequent Proceeds shall be disbursed as follows:

- (i) If Subrecipient has received full payment of the Grant Proceeds, Subrecipient shall remit any Subsequent DOB Proceeds to PRDOH. PRDOH shall return to the Subrecipient any Subsequent Proceeds in excess of the Subsequent DOB Proceeds.
- (ii) If Subrecipient has received no payment of the Grant Proceeds, PRDOH shall reduce the payment of the Grant Proceeds to Subrecipient by the amount of the Subsequent DOB Proceeds and shall return all Subsequent Proceeds in excess of the Subsequent DOB Proceeds to Subrecipient.
- (iii) If Subrecipient has received a portion of the Grant Proceeds, the following shall occur: (A) PRDOH shall reduce the remaining payments of the Grant Proceeds and return Subsequent DOB Proceeds in such amount to the Subrecipient; and (B) Subrecipient shall remit any remaining Subsequent DOB Proceeds to PRDOH. PRDOH shall also return to the Subrecipient any Subsequent Proceeds in excess of the Subsequent DOB Proceeds.
- (iv) If the PRDOH makes the determination that Subrecipient does not qualify to participate in the Program or Subrecipient decides not to participate in the Program, PRDOH shall return the Subsequent Proceeds to Subrecipient, and this Agreement shall terminate.


(c) Once PRDOH has recovered an amount equal to the Grant Proceeds paid to Subrecipient, PRDOH will reassign to Subrecipient any rights given to PRDOH pursuant to this Agreement.

4. **Miscellaneous.**

(a) Subrecipient hereby represents that all statements and representations made by Subrecipient regarding any Proceeds are true and correct, as of the date of the issuance of the Grant Proceeds.

 (b) In any proceeding to enforce this Agreement, PRDOH shall be entitled to recover all costs of enforcement, including PRDOH's attorney fees.

(c) The parties hereto each waive the right to have any judicial proceeding concerning any of the provisions hereof tried by a jury.

 (d) Neither this Agreement nor any portion or provisions hereof may be changed, waived or terminated orally or by any course of dealing, or in any manner other than by an agreement in writing, signed by all parties hereto and approved by PRDOH.

(e) This Agreement and the rights and obligations of the parties shall be governed and construed in accordance with federal law and the laws of the Government of Puerto Rico without giving effect to conflict of law provisions. Any action arising out of or related to this Agreement shall be brought within the Government of Puerto Rico.

(f) The captions of the various sections of this Agreement have been inserted only for the purpose of convenience; such captions are not a part of this Agreement and shall not be deemed in any manner to modify, explain, enlarge or restrict any provisions of this Agreement.

(g) Subrecipient acknowledges that making a false, fictitious, or fraudulent statement or representation in this agreement is punishable under Federal and State law and shall constitute a separate criminal offense each time a public benefit is fraudulently received.

(h) Subrecipient acknowledges that they have been informed and understand the penalties for making a materially false or misleading statement to obtain CDBG-DR funds under the Program or any other of the PRDOH's programs.

IN WITNESS WHEREOF, the parties hereto have willingly and voluntarily caused this Agreement to be duly executed as of the day and year first above written.

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IN WITNESS THEREOF, the Parties hereto execute this Agreement in the place and on the date first above written.


Puerto Rico Department of Housing:

William O. Rodríguez Rodríguez
By: William O. Rodríguez Rodríguez (Mar 16, 2021 17:13 EDT)

Name: William O. Rodríguez Rodríguez, Esq.

Title: Secretary of the Puerto Rico Department of Housing

Subrecipient:


By: _____

Name: Hon. José Anibal Meléndez Méndez

Title: Mayor of the Municipality of Fajardo

DUNS Number: 139121672

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FAJARDO - SUBROGATION

Final Audit Report

2021-03-16

Created:	2021-03-16
By:	Radames Comas Segarra (rcomas@vivienda.pr.gov)
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Transaction ID:	CBJCHBCAABAArvezZoScI7p6d78ZRVVC2Kmn4DZvJrh

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