

PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE DEPARTMENT OF NATURAL AND ENVIRONMENTAL RESOURCES
OF THE COMMONWEALTH OF PUERTO RICO
FOR CONSTRUCTION OF THE
RIO PUERTO NUEVO
FLOOD CONTROL PROJECT

THIS AGREEMENT is entered into this 10th day of March, 1994, by and between the DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government"), acting by and through the Assistant Secretary of the Army (Civil Works), and the DEPARTMENT OF NATURAL AND ENVIRONMENTAL RESOURCES of the Commonwealth of Puerto Rico (hereinafter referred to as the "Local Sponsor"), acting by and through the Secretary of the Department of Natural and Environmental Resources.
WITNESSETH, THAT:

WHEREAS, construction of the RIO PUERTO NUEVO FLOOD CONTROL PROJECT at San Juan, Puerto Rico, was authorized by Section 401(a) of the Water Resources Development Act of 1986, Public Law 99-662;

WHEREAS, the Government and the Local Sponsor desire to enter into a Project Cooperation Agreement for construction of the Rio Puerto Nuevo Flood Control Project (hereinafter referred to as the "Project" and defined in Article I.a. of this Agreement);

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, specifies the cost-sharing requirements applicable to the Project;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, provides that the construction of any water resources project by the Secretary of the Army shall not be commenced until each non-Federal interest has entered into a written agreement to furnish its required cooperation for the Project;

WHEREAS, the Local Sponsor does not qualify for a reduction of the maximum non-Federal cost share pursuant to the guidelines which implement Section 103(m) of the Water Resources Development Act of 1986, Public Law 99-662; and


WHEREAS, the Government and the Local Sponsor have the legal authority and capability to perform as hereinafter set forth and intend to cooperate in the cost-sharing and financing of the construction of the Project in accordance with the terms of this Agreement.

NOW, THEREFORE, the Government and the Local Sponsor agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

a. The term "Project" shall mean the improvements generally described in the General Design Memorandum entitled "Rio Puerto Nuevo, Puerto Rico, General Design Memorandum" dated December 1991, revised April 1992, and approved by the Assistant Secretary of the Army (Civil Works), on 4 September 1992. The flood control features consist of two baffle pier stilling areas, two upstream debris basins, and improving 11.2 miles of the existing channel of Rio Puerto Nuevo and Rio Piedras and five tributaries of the Rio Puerto Nuevo Basin, using a combination of bulkheaded trapezoidal channel and concrete rectangular channel. The recreational features of the project consist of the construction of a paved bicycle path and linear park with planters, rest stops, three pedestrian bridges, benches, and a pedestrian path along the Puerto Nuevo Channel.



b. The term "total project costs" shall mean all costs incurred by the Local Sponsor and the Government directly related to construction of the Project. Such costs shall include, but not necessarily be limited to: all continuing planning and engineering costs incurred after October 1, 1985; all advanced engineering and design costs; all preconstruction engineering and design costs; engineering and design costs during construction; actual construction costs, including the costs of constructing, relocating or modifying existing railroad bridges and approaches thereto; supervision and administration costs; costs of contract dispute settlements or awards; the value of lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and the value of utility and facility relocations, as may be required for the construction, operation, and maintenance of the Project; and the cost of investigations to identify the existence of hazardous substances as identified in Article XVII.a.; but shall not include any costs for operation, maintenance, repair, replacement, or rehabilitation or increased costs for betterments.

c. The term "total project flood control costs" shall mean that portion of total project costs assigned by the Government to the flood control purpose.

d. The term "total project recreation costs" shall mean the separable portion of total project costs assigned by the Government to the recreation purpose.

e. The term "Government Representative" shall mean the U.S.

Army Engineer for the Jacksonville District or his designee.

f. The term "period of construction" shall mean the time from the advertisement of the first construction contract to the time the Government Representative certifies in writing to the Local Sponsor that construction of the Project is complete. The Government Representative shall furnish to the Local Sponsor copies of the Government's Written Notice of Acceptance of Completed Work furnished to the contractor(s) for all contracts for the Project.

g. The term "highway" shall mean any highway, thoroughfare, roadway, street, or other public road or way.

h. The term "relocations" shall mean the preparation of plans and specifications for, and the accomplishment of all, alterations, modifications, lowering or raising in place, and/or new construction related to, but not limited to, existing: railroads (excluding existing railroad bridges and approaches thereto), highways, and other bridges, pipelines, public utilities (such as water and sanitary sewer lines, telephone lines, and storm drains), aerial utilities, cemeteries, and other facilities, structures, and improvements determined by the Government to be necessary for the construction, operation and maintenance of the Project.

i. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

j. The term "functional portion of the Project" shall mean a completed portion of the Project as determined by the Government Representative in writing to be suitable for tender to the Local Sponsor to operate and maintain in advance of completion of the entire Project. To be suitable for tender, the Government Representative must determine that the completed portion of the Project can function independently and for a useful purpose, although the balance of the Project is not complete.

k. The term "betterment" shall mean the design and construction of a Project feature accomplished on behalf of, or at the request of, the Local Sponsor in accordance with standards which exceed the standards which the Government would otherwise apply for accomplishing the design and construction of the Project.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND LOCAL SPONSOR

a. The Government, subject to receiving funds appropriated by the Congress of the United States and using funds provided by the Local Sponsor, shall expeditiously construct the Project (including construction, modification, or relocation of existing railroad bridges and approaches thereto), applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. The Local Sponsor shall be afforded the opportunity to review and comment on all contracts, including relevant plans and specifications, prior to the issuance of invitations for bids. Before initial construction of the Project can proceed, the Local Sponsor must concur in writing with issuance of the invitation for bids for the first construction contract. To the extent possible, the Local Sponsor thereafter also will be afforded the opportunity to review and comment on all modifications and change orders prior to the issuance to the contractor of a Notice to Proceed. In those cases where providing notice to the Local Sponsor of the required contract modifications or change orders is not possible prior to issuance of Notice to Proceed, such notification will be provided after the fact at the earliest date possible. The Government Representative will, in good faith, consider the comments of the Local Sponsor, but award of contracts, modifications or change orders, and performance of all work on the Project (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government Representative.

b. After the Government determines that the Project or a functional portion of the Project is complete, and notifies the Local Sponsor in writing of such determination, the Government shall turn the Project or functional portion of the Project over to the Local Sponsor, which shall accept the Project or functional portion of the Project and be solely responsible for operating, maintaining, repairing, replacing, and rehabilitating the Project or functional portion of the Project in accordance with Article VIII hereof.

c. The Local Sponsor shall contribute through a combination of cash payments and the provision of Project lands, easements, rights-of-way and relocations, as herein specified and further specified in Article VI, a minimum of 25 percent, but not to exceed 50 percent, of total project flood control costs.

1. During the period of construction, the Local Sponsor shall provide a cash contribution equal to 5 percent of total project flood control costs.


2. As further specified in Article III hereof, the Local Sponsor shall provide all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated

material disposal areas, and perform all relocations determined by the Government to be necessary for construction, operation, and maintenance of the Project.

3. If the value of the contributions provided under paragraphs c.1. and c.2. of this Article is less than 25 percent of total project flood control costs, the Local Sponsor shall provide, as further specified in Article VI hereof, additional cash contributions in the amount necessary to make the Local Sponsor's total contribution equal to 25 percent of total project flood control costs.

d. The Local Sponsor may request the Government to acquire lands, easements, or rights-of-way, or perform relocations on behalf of the Local Sponsor. Such services as the Government may elect to provide, shall be performed in accordance with terms or conditions of separate agreements and all such work shall be paid for in advance by the Local Sponsor.

e. The Local Sponsor may request the Government to accomplish betterments. The Local Sponsor will be solely responsible for any increase in costs resulting from the betterments and all such increased costs will be paid in advance by the Local Sponsor in accordance with Article VI.



f. If the value of the contributions provided under paragraphs c.1. and c.2. of this Article exceed 50 percent of the total project flood control costs, the Government shall, subject to the availability of funds, reimburse the Local Sponsor for that portion of the value of lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas, and relocations, which exceed 45 percent of the total project flood control cost. Alternately, and at the sole discretion of the Government, the Government may at no cost to the Local Sponsor provide any remaining lands, easements, rights-of-way, relocations, and suitable borrow and dredged or excavated material disposal areas required for the construction, operation, and maintenance of the Project in excess of 45 percent of the total project flood control costs.

g. The Local Sponsor shall pay one-half of the total project recreation costs of the Project, in accordance with Article VI.

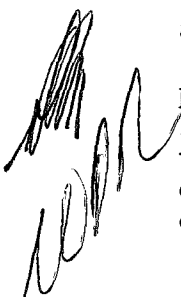
h. No Federal funds may be used to meet the Local Sponsor's share of total project costs under this Agreement unless the expenditure of such funds is expressly authorized by statute as verified in writing by the Federal granting agency.

i. The Local Sponsor agrees to participate in and comply with applicable Federal flood plain management and flood insurance programs.

j. Not less than once each year the Local Sponsor shall inform affected interests of the limitations of the protection afforded by the Project.

k. The Local Sponsor shall publicize flood plain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in preventing unwise future development in the flood plain and in adopting such regulations as may be necessary to prevent unwise future development and to ensure compatibility with protection levels provided by the Project.

ARTICLE III - LANDS, RELOCATIONS, AND PUBLIC LAW 91-646



a. The Government shall provide, in coordination with the Local Sponsor, a written description of the anticipated real estate requirements for the Project. Thereafter, the Local Sponsor shall furnish all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, as may be determined by the Government in that description, or in any subsequent description coordinated with the Local Sponsor, to be necessary for the construction, operation and maintenance of the Project, and shall furnish to the Government evidence supporting the Local Sponsor's legal authority to grant rights-of-entry to such lands. The necessary lands, easements, and rights-of-way for the Project may be provided incrementally for each construction contract. All lands, easements, and rights-of-way determined by the Government to be necessary for work to be performed under a construction contract must be furnished prior to the advertisement of that construction contract.

b. The Local Sponsor shall provide or pay to the Government the cost of providing all retaining dikes, wasteweirs, bulkheads, and embankments, including all monitoring features and stilling basins, that may be required at any dredged or excavated material disposal areas required for the construction, operation, and maintenance of the Project.


c. Upon notification from the Government, the Local Sponsor shall accomplish or arrange for accomplishment of all relocations determined by the Government to be necessary for construction, operation and maintenance of the Project.

d. The Local Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands,

easements, and rights-of-way, and performing relocations for construction, operation, and maintenance of the Project, and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - VALUE OF LANDS AND RELOCATIONS

a. The Local Sponsor shall not receive any credit for lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, previously provided as an item of cooperation for another Federal project nor shall the value thereof be included in total project costs. The value of the lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, to be included in total project costs and credited towards the Local Sponsor's share of total project costs shall be determined in accordance with the following procedures:



1. If the lands, easements, or rights-of-way are owned by the Local Sponsor as of the date the first construction contract for the Project is awarded, the credit shall be the fair market value of the interest at the time of such award or in exceptional circumstances, upon request of the Local Sponsor and in the sole discretion of the Assistant Secretary of the Army for Civil Works, the actual purchase price paid by the Local Sponsor. The fair market value, if used, shall be determined by an appraisal, to be obtained by the Local Sponsor, which has been prepared by a qualified appraiser who is acceptable to both the Local Sponsor and the Government. The appraisal shall be reviewed and approved by the Local Sponsor and the Government.


2. If the lands, easements, or rights-of-way are acquired by the Local Sponsor after the date of award of the first construction contract for the Project, the credit shall be the fair market value of the interest at the time such interest is acquired. The fair market value shall be determined as specified in Article IV.a.1. of this Agreement. If the Local Sponsor pays an amount in excess of the approved appraised fair market value, the Local Sponsor may be entitled to a credit for the actual purchase price paid provided that the purchase price is approved by the Government in writing.

3. If the Local Sponsor acquires more lands, easements, or rights-of-way than the Government determines are necessary for construction, operation, and maintenance of the Project, then only the value of such portions of those acquisitions as have been determined by the Government to be necessary for the construction, operation, and maintenance of the Project shall be included in total project costs and credited towards the Local Sponsor's share.

4. Credit for lands, easements, and rights-of-way acquired through eminent domain proceedings occurring after the date of this Agreement will be based on court awards for the real property interests taken, or on stipulated settlements or portions of stipulated settlements that have received written Government approval. The fair market value for the purposes of filing an eminent domain proceeding in court shall be based on an appraisal prepared and approved as specified in Article IV.a.1. of this Agreement.

5. Credit for lands, easements, or rights-of-way acquired by the Local Sponsor within a five-year period preceding the date of this Agreement, or at any time after this Agreement is signed, will also include the reasonable documented incidental costs of acquiring the interest, e.g., closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any Public Law 91-646 relocation assistance benefits provided in accordance with the obligations under this Agreement.

b. The Government shall provide the Local Sponsor with a written description of required relocations. The value of relocations which will be included in total project costs and credited towards the Local Sponsor's share of total project costs shall be determined by the Government as set forth below:

 1. Highways and Highway Bridges: Only that portion of the cost as would be necessary to construct substitute bridges and highways to the design standard that the Commonwealth of Puerto Rico would use in constructing a new bridge or highway under similar conditions of geography and traffic loads.

2. Utilities and Facilities, Structures and Improvements (including railroads): Actual relocation costs, less depreciation, less salvage value, plus the cost of removal, less the increased cost of betterments. New materials shall not be used in any alteration or relocation if materials of value and usability equal to those in the existing facility are available or can be obtained as salvage from the existing facility or otherwise, unless the provision of new material is more economical. If, despite the availability of used material, new material is used, where the use of such new material represents an additional cost, such cost will not be included in total project costs, nor credited toward the Local Sponsor's share.

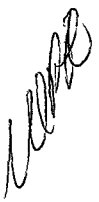
ARTICLE V - CONSTRUCTION PHASING AND MANAGEMENT

a. To provide for consistent and effective communication, the Local Sponsor and the Government shall, prior to the advertisement of the first construction contract, appoint representatives to coordinate on all facets of Project

development, including Project design, scheduling, plans, specifications, real estate requirements, award of contracts, contract modifications and change orders, contract costs, claims, and other related matters.

b. These representatives shall generally oversee the Project construction and shall be identified as the Project Coordination Team. They shall meet regularly during the period of construction and will be informed of all changes in total project costs. The Project Coordination Team shall make recommendations concerning construction as it deems are warranted to the Government Representative, including suggestions to avoid potential sources of dispute.

c. The Government Representative shall, in good faith, consider the recommendations of the Project Coordination Team on all matters relating to construction and anticipated requirements for operation, maintenance, repair, replacement and rehabilitation of the Project. The Government Representative, having the legal authority and responsibility for construction of the Project, has discretion to accept, reject, or modify the recommendations of such representatives.



ARTICLE VI - METHOD OF PAYMENT

a. The Local Sponsor shall provide, during the period of construction, the payments required under Article II of this Agreement. Total project costs are currently estimated to be \$407,600,000 and the Local Sponsor's share of total project costs is currently estimated to be \$102,100,000 (to include \$346,000 of the \$692,000 total project recreation cost). In order to meet the Local Sponsor's share, the Local Sponsor must provide a cash contribution currently estimated to be \$54,768,000. The dollar amounts set forth in this Article are based upon the Government's best estimates which reflect projections of costs, price level changes, and anticipated inflation. Such costs estimates are subject to adjustments based upon cost actually incurred and are not to be construed as the total financial responsibilities of the Government and the Local Sponsor.

b. The Local Sponsor shall provide its required contribution during the period of construction in accordance with the following provisions:

1. For purposes of budget planning, the Government shall notify the Local Sponsor by May of the preceeding year of the estimated funds that will be required from the Local Sponsor to meet its shares of total project flood control costs and total project recreation costs for the upcoming fiscal year.

2. No later than 120 calendar days prior to the award of the first construction contract, the Government shall notify the Local Sponsor of its shares of the total project flood control costs and total project recreation costs required for the first fiscal year of construction, including the Local Sponsor's share of costs attributable to the Project incurred prior to the initiation of construction. No later than 60 calendar days thereafter, the Local Sponsor shall verify to the satisfaction of the Government that the Local Sponsor has deposited the requisite amount in an escrow account acceptable to the Government, with interest accruing to the Local Sponsor.

3. For the second and subsequent fiscal years of Project construction, the Government shall, no later than 60 calendar days prior to the beginning of the fiscal year, notify the Local Sponsor of its shares of total project flood control costs and total project recreation costs for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the Local Sponsor shall make the necessary funds available to the Government through the funding mechanism specified in Article VI.b.2. of this Agreement.

4. As construction of the Project proceeds, the Government shall on a regular basis each year, adjust the amounts required to be provided under this paragraph to reflect actual costs to date. If at any time during the period of construction the Government determines that additional funds will be needed from the Local Sponsor, the Government shall so notify the Local Sponsor, and the Local Sponsor, no later than 60 calendar days from receipt of such notice, shall make the necessary funds available through the funding mechanism specified in Article VI.b.2. of this Agreement.

c. The Government will draw on the escrow account provided by the Local Sponsor such sums as the Government deems necessary to cover contractual and in-house fiscal obligations attributable to the Project as they are incurred, as well as Project costs incurred by the Government prior to the initiation of construction.

d. During the period of construction, the Government shall provide quarterly financial reports on the status of total project flood control costs and total project recreation costs and the status of contributions made by the Local Sponsor. Upon completion of the Project and resolution of all relevant contract claims and appeals, the Government shall compute the total project flood control costs and total project recreation costs and tender to the Local Sponsor a final accounting of the Local Sponsor's shares of total project flood control costs and total project recreation costs.

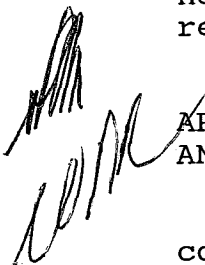
1. In the event the total contribution by the Local

Sponsor is less than the Local Sponsor's required shares of total project flood control costs and total project recreation costs, the Local Sponsor shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet the Local Sponsor's required shares of the total project flood control costs and total project recreation costs.

2. In the event the total contribution by the Local Sponsor is more than the Local Sponsor's required shares of total project flood control costs and total project recreation costs, the Government shall, no later than 90 calendar days after the final accounting is complete, subject to the availability of funds, return the excess to the Local Sponsor; however, the Local Sponsor shall not be entitled to any refund of the 5 percent cash contribution required pursuant to Article II.c.1. of this Agreement. In the event existing funds are not available to repay the Local Sponsor for excess contributions provided, the Government shall seek such appropriations as are necessary to repay the Local Sponsor for excess contributions provided.

ARTICLE VII - DISPUTES

Before any party to this Agreement may bring suit in any court concerning an issue relating to this Agreement, such party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to the parties.



ARTICLE VIII - OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND REHABILITATION (OMRR&R)

a. After the Government Representative has determined that construction of the Project or functional portion of the Project is complete and provided the Local Sponsor with written notice of such determination, the Local Sponsor shall operate, maintain, repair, replace, and rehabilitate the completed Project, or functional portion of the Project, at no cost to the Government, in accordance with applicable Federal and State laws as provided in Article XII and specific directions prescribed by the Government in an OMRR&R Manual and any subsequent amendments thereto.

b. The Local Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land which the Local Sponsor owns or controls for access to the Project for the purpose of inspection, and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. If an inspection shows that the Local Sponsor for any reason is failing to fulfill the

Local Sponsor's obligations under this Agreement without receiving prior written approval from the Government, the Government will send a written notice to the Local Sponsor. If after 30 calendar days from receipt of notice, the Local Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon lands the Local Sponsor owns or controls for access to the Project for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Government shall operate to relieve the Local Sponsor of responsibility to meet the Local Sponsor's obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to assure faithful performance pursuant to this Agreement.

ARTICLE IX - RELEASE OF CLAIMS

The Local Sponsor shall hold and save the Government free from all damages arising from the construction, operation, maintenance, repair, replacement, and rehabilitation of the Project and any Project-related betterments, except for damages due to the fault or negligence of the Government or the Government's contractors.

ARTICLE X - MAINTENANCE OF RECORDS

Within 60 days of the date of this Agreement, the Government and the Local Sponsor shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement to the extent and in such detail as will properly reflect total project costs. The Government and the Local Sponsor shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of three years after completion of construction of the Project and resolution of all relevant claims arising therefrom, and shall make available at their offices at reasonable times, such books, records, documents, and other evidence for inspection and audit by authorized representatives of the parties to this Agreement.

ARTICLE XI - GOVERNMENT AUDIT

The Government shall conduct an audit, when appropriate, of the Local Sponsor's records for the Project to ascertain the allowability, reasonableness, and allocability of the Local Sponsor's costs for inclusion as credit against the Local Sponsor's share of total project costs.

ARTICLE XII - FEDERAL AND COMMONWEALTH LAWS

In the exercise of the Local Sponsor's rights and obligations hereunder, the Local Sponsor agrees to comply with all applicable Federal and Commonwealth laws and regulations, including Section 601 of Title VI of the Civil Rights Act of 1964, Public Law 88-352, and Department of Defense Directive 5500.II issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

ARTICLE XIII - RELATIONSHIP OF PARTIES

The Government and the Local Sponsor act in an independent capacity in the performance of their respective functions under this Agreement, and neither is to be considered the officer, agent, or employee of the other.

ARTICLE XIV - OFFICIALS NOT TO BENEFIT

No member of, or delegate to, the Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE XV - COVENANT AGAINST CONTINGENT FEES


The Local Sponsor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Local Sponsor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability, or, in the Government's discretion, to add to the Agreement or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XVI - TERMINATION OR SUSPENSION

a. If at any time the Local Sponsor fails to make the payments required under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate or suspend work on the Project until the Local Sponsor is no longer in arrears, unless the Assistant Secretary of the Army (Civil Works) determines that continuation of work on the Project is in the interest of the

United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project. Any delinquent payment shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.

b. If the Government fails to receive annual appropriations in amounts sufficient to meet Project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the Local Sponsor. After 60 calendar days either party may elect without penalty to terminate this Agreement pursuant to this Article or to defer future performance hereunder; however, deferral of future performance under this Agreement shall not affect existing obligations or relieve the parties of liability for any obligation previously incurred. In the event that either party elects to terminate this Agreement pursuant to this Article, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI of this Agreement. In the event that either party elects to defer future performance under this Agreement pursuant to this Article, such deferral shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the Local Sponsor elects to terminate this Agreement.




c. Notwithstanding any other provision of this Agreement, if the award of any contract for construction of the Project would, at the time of award, result in the total obligations for construction of the Project exceeding \$407,600,000 the award of that contract and subsequent contracts shall be deferred until such time as the Government and the Local Sponsor agree to resume construction of the Project.

ARTICLE XVII - HAZARDOUS SUBSTANCES

a. After execution of this Agreement and upon direction by the Government Representative, the Local Sponsor shall perform, or cause to be performed, such investigations for hazardous substances as are determined necessary by the Government or the Local Sponsor to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC 9601-9675, on lands necessary for Project construction, operation, and maintenance. All actual costs incurred by the Local Sponsor which are properly allowable and allocable to performance of any such investigations for hazardous substances shall be included in total project costs and cost shared as a

construction cost in accordance with Section 103 of Public Law 99-662.

b. In the event it is discovered through an investigation for hazardous substances or other means that any lands, easements, rights-of-way, borrow or disposal areas to be acquired or provided for the Project contain any hazardous substances regulated under CERCLA, the Local Sponsor and the Government shall provide prompt notice to each other, and the Local Sponsor shall not proceed with the acquisition of lands, easements, rights-of-way, borrow or disposal areas until mutually agreed.



c. The Government and the Local Sponsor shall determine whether to initiate construction of the Project, or if already in construction, to continue with construction of the Project, or to terminate construction of the Project for the convenience of the Government in any case where hazardous substances regulated under CERCLA are found to exist on any lands necessary for the Project. Should the Government and the Local Sponsor determine to proceed or continue with construction after considering any liability that may arise under CERCLA, the Local Sponsor shall be responsible, as between the Government and the Local Sponsor, for any and all necessary clean up and response costs, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of total project costs as defined in this Agreement. In the event the Local Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Local Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may either terminate or suspend work on the Project or proceed with further work as provided in Article XVI of this Agreement.

d. The Local Sponsor and the Government shall consult with each other under Article V of this Agreement to assure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to Article XVII.c. of this Agreement shall not relieve any party from any liability that may arise under CERCLA.

e. As between the Government and the Local Sponsor, the Local Sponsor shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, the Local Sponsor shall operate, maintain, repair, replace and rehabilitate the Project in a manner that will not cause liability to arise under CERCLA.

ARTICLE XVIII - NOTICES

a. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be

deemed to have been duly given if in writing and delivered personally, given by prepaid telegram, or mailed by first-class (postage pre-paid), registered, or certified mail, as follows:

If to the Local Sponsor:

Secretary
Department of Natural Resources
P.O. Box 5887
Puerto De Tierra
San Juan, Puerto Rico 00906-5886

If to the Government:

District Engineer
U.S. Army Engineer District
Jacksonville District
P.O. Box 4970
Jacksonville, Florida 32232-0019

b. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

c. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at such time as it is either personally delivered or seven calendar days after it is mailed, as the case may be.



ARTICLE XIX - CONFIDENTIALITY

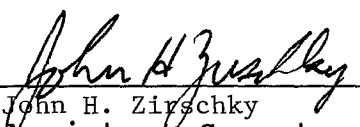
To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XX - SECTION 902 PROJECT COST LIMITS

The Local Sponsor has reviewed the provisions set forth in Section 902 of Public Law 99-662, as amended, and understands that Section 902 establishes the maximum total project cost. For purposes of this Agreement, the Section 902 cost limit is \$409,143,000 as calculated on 7 April 1993. This amount is calculated using procedures set forth in Appendix P of ER 1105-2-100. It shall be adjusted to allow for appropriate increases for inflation and changes in total project costs as provided in Section 902. Should this cost maximum be reached, no additional funds may be expended on the Project until additional authority is obtained from Congress.

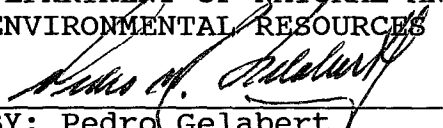
IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Assistant Secretary of the Army (Civil Works).

THE DEPARTMENT OF THE ARMY


BY: John H. Zirschky
Acting Assistant Secretary
of the Army (Civil Works)

DATE: Mar. 10, 1994

DEPARTMENT OF NATURAL AND
ENVIRONMENTAL RESOURCES

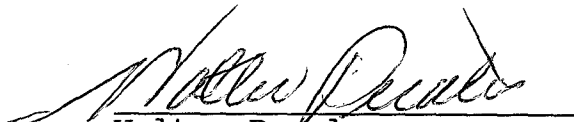

BY: Pedro Gelabert
Secretary of the
Department of Natural
and Environmental
Resources

DATE: FEB. 15, 1994

CERTIFICATE OF AUTHORITY

I, Walter Perales, do hereby certify that I am the principal legal officer of the Department of Natural and Environmental Resources of the Commonwealth of Puerto Rico and that the Department of Natural and Environmental Resources is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Department of Natural and Environmental Resources of the Commonwealth of Puerto Rico in connection with the Project. Also, I do certify that the Commonwealth of Puerto Rico has full authority, legal capability and legal responsibility to pay damages, if necessary, in accordance with Section 221 of Public Law 91-611 in the event of the failure of the Department of Natural and Environmental Resources to perform this Agreement and that the person who has executed the Agreement on behalf of the Department of Natural and Environmental Resources of the Commonwealth of Puerto Rico has acted within his statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 15th day of February 1994.



Walter Perales
Attorney
Department of Natural and
Environmental Resources
Commonwealth of Puerto Rico

Approved by:




Pedro Pierluisi
Attorney General
Commonwealth of Puerto Rico

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

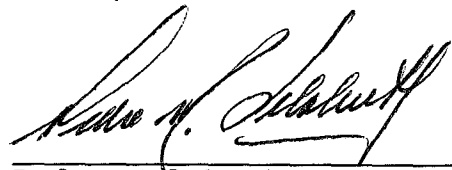
(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

 (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

DATE:

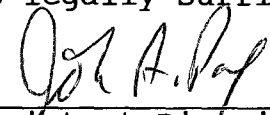
FEB. 15, 1994



Pedro Gelabert
Secretary
Department of Natural and
Environmental Resources

CERTIFICATION OF LEGAL REVIEW

The draft Project Cooperation Agreement for the Rio Puerto Nuevo Flood Control Project has been fully reviewed by the Office of Counsel, USAED Jacksonville and is legally sufficient.



Assistant District Counsel

