

AMENDMENT NUMBER 1
TO THE
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 Amendment Number 1 is entered into this 20 day of February, 2019, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander for the Jacksonville District and the Department of Natural and Environmental Resources of the Commonwealth of Puerto Rico (hereinafter the "Local Sponsor"), represented by the Secretary.

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 entered into a Project Cooperation Agreement on March 10, 1994 (hereinafter referred to as the "Agreement") for construction of the Rio Puerto Nuevo Flood Control Project (hereinafter the "Project", as defined in Article I.a. of the Agreement);

WHEREAS, notwithstanding Section 103 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2213), which specifies the cost-sharing requirements applicable to the Project, Title IV, Division B of the Bipartisan Budget Act of 2018, Public Law 115-123, enacted February 9, 2018 (hereinafter "BBA 2018"), authorizes the Government to complete construction of the Project at full Federal expense to the extent that appropriations provided under the Construction heading of the BBA 2018 are available and used for such purpose; and

WHEREAS, the provisions of Section 902 of the Water Resources Development Act of 1986, as amended, do not apply to the funds provided in BBA 2018 that will be used for completing construction of the Project.

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

1. Insert after the third WHEREAS clause the following:

“WHEREAS, notwithstanding Section 103 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2213), which specifies the cost-sharing requirements applicable to the Project, Title IV, Division B of the Bipartisan Budget Act of 2018, Public Law 115-123, enacted February 9, 2018 (hereinafter “BBA 2018”), authorizes the Government to complete construction of the Project at full Federal expense to the extent that appropriations provided under the Construction heading of the BBA 2018 are available and used for such purpose;”

2. Insert as the last Article the following:

“ARTICLE XXI – COMPLETION OF CONSTRUCTION OF THE PROJECT USING FUNDING PROVIDED IN BBA 2018

Notwithstanding any other provisions of this Agreement, the Government and Local Sponsor agree to the following terms and conditions for completion of construction of the Project to the extent BBA 2018 funds are available and used for such purpose:

- a. As of the effective date of Amendment Number 1 to this Agreement, the amount of available BBA 2018 funds is estimated at \$1,552,453,000. Any costs funded with BBA 2018 funds shall not be included in the calculation of total project costs for cost-sharing purposes.
- b. The Local Sponsor remains responsible for providing the lands, easements, and rights-of-way, and performing all relocations, and making improvements to lands, easements, and rights-of-way to enable the disposal of dredged or excavated material required to complete construction of the Project.
 1. For lands, easements, and rights-of-way acquired from private owners after the effective date of Amendment Number 1 to this Agreement, the Government shall reimburse the Local Sponsor, subject to the availability of BBA 2018 funds, for costs it incurs in acquiring such lands, easements, and rights-of-way, except as provided in Article XXI.h. The crediting procedures in Article IV.a. will be used to determine the costs, documented to the satisfaction of the Government, that are eligible for reimbursement. If requested by the Local Sponsor, the Government, in its sole discretion, may agree to acquire any lands, easements, or rights-of-way on the Local Sponsor’s behalf, using BBA 2018 funds.
 2. Any publicly owned lands, easements, and rights-of-way required for completing construction of the Project will be provided by the Local Sponsor at no cost to the Government and without credit or reimbursement, except as provided in Article XXI.h.
 3. For relocations performed after the effective date of Amendment Number 1 to this Agreement, the Government shall reimburse the Local Sponsor, subject to the availability of BBA 2018 funds, for costs it incurs in performing such relocations, except as provided in Article XXI.h. The crediting procedures in Article IV.b. will be used to determine the costs, documented to the satisfaction of the Government, that are eligible for reimbursement. If requested by the Local Sponsor, the Government, in its sole discretion, may agree to perform any relocations on the Local Sponsor’s behalf, using BBA 2018 funds.

4. For improvements to lands, easements, and rights-of-way to enable the disposal of dredged or excavated material made after the effect date of Amendment Number 1 to this Agreement, the Government shall reimburse the Local Sponsor, subject to the availability of BBA 2018 funds, for costs it incurs in making such improvements, documented to the satisfaction of the Government, except as provided in Article XXI.h. If requested by the Local Sponsor, the Government, in its sole discretion, may agree to make any improvements on the Local Sponsor's behalf, using BBA 2018 funds.

c. Subject to the availability of BBA 2018 funds, the Government shall reimburse the Local Sponsor for costs, documented to the satisfaction of the Government, that the Local Sponsor incurs, after the effective date of Amendment Number 1 to this Agreement, for investigations for hazardous substances conducted pursuant to Article XVII.a.

d. The provisions of Article XX regarding the Section 902 project cost limits do not apply to the funds provided in BBA 2018 that are used for completing construction of the Project.

e. In the event that there are insufficient BBA 2018 funds to complete construction of the Project, such completion shall be subject to cost-sharing as otherwise provided for in this Agreement.

f. Nothing in this Article affects the responsibility of the Local Sponsor for operation, maintenance, repair, replacement, and rehabilitation of the Project as provided in Article VIII and for indemnification as provided in Article IX.

g. Except as provided in Article XXI.c., nothing in this Article affects the responsibilities of the parties regarding hazardous substances as provided in Article XVII.

h. As soon as practicable, the Government shall perform an interim accounting of work that has or will be completed with other than BBA 2018 funds on a cost-shared basis and furnish the Local Sponsor with the results of such interim accounting.

1. If the Government determines that the Local Sponsor has not met its minimum required cash contribution for the cost-shared work, the Local Sponsor shall provide funds in the amount necessary to meet the required minimum cash contribution.

2. If the Government determines that the Local Sponsor owes an additional amount to meet the required minimum non-Federal share of the cost-shared work, the amount owed by the Local Sponsor may be reduced by the estimated value of publicly owned lands, easements, and rights-of-way that the Local Sponsor must provide after the date of Amendment Number 1 to this Agreement.

3. If the Government determines the estimated value of publicly owned lands, easements, and rights-of-way that the Local Sponsor must provide after the date of Amendment Number 1 to this Agreement is less than the additional amount necessary to meet the required minimum non-Federal share of the cost-shared work, the Local Sponsor shall either provide the

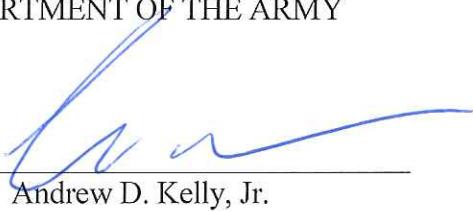
required amount in cash or elect to waive reimbursement of the required amount for privately owned lands, easements, and rights-of-way, relocations, and improvements to enable the disposal of dredged or excavated material to be acquired, provided, or made after the date of Amendment Number 1 to this Agreement.

4. The determinations made as a result of the interim accounting shall be verified during the final accounting. The crediting procedures in Article IV.a. shall be used to verify the value of any publicly owned lands, easements, and rights-of-way used to reduce the amount owed by the Local Sponsor for the cost-shared work.”

3. All other terms and conditions of this Agreement remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment Number 1 which shall become effective upon the date it is signed by the District Commander for the Jacksonville District.

DEPARTMENT OF THE ARMY

BY: 

Andrew D. Kelly, Jr.
Colonel, U.S. Army
District Commander

DATE:

February 20, 2019

DEPARTMENT OF NATURAL AND
ENVIRONMENTAL RESOURCES

BY: 

Honorable Tania Vázquez Rivera
Secretary

DATE:

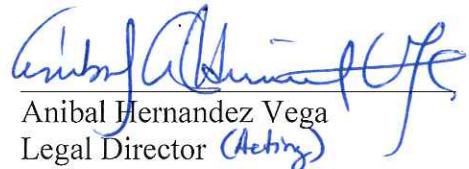
February 12, 2019

CERTIFICATE OF AUTHORITY

I, Anibal Hernandez Vega, do hereby certify that I am the principal legal officer of the Department of Natural and Environmental Resources of the Commonwealth of Puerto Rico, that the Department of Natural and Environmental Resources of the Commonwealth of Puerto Rico is a legally constituted public body with full authority and legal capability to perform the terms of the Amendment Number 1 to 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 Rio Puerto Nuevo Flood Control Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of the Amendment, as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the person who executed the Amendment on behalf of the Department of Natural and Environmental Resources of the Commonwealth of Puerto Rico acted within her statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this

12th day of February 2019.



Anibal Hernandez Vega
Legal Director *(Acting)*

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 31 U.S.C. 1352. 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.


Honorable Tania Vázquez Rivera
Secretary
Department of Natural and Environmental Resources
of the Commonwealth of Puerto Rico

DATE: February 12, 2019