

**MEMORANDUM OF AGREEMENT AMONG
FEDERAL AVIATION ADMINISTRATION,
PUERTO RICO STATE HISTORIC PRESERVATION OFFICE, AND
ADVISORY COUNCIL ON HISTORIC PRESERVATION
ON SECTION 106 CONSULTATION FOR
SAN JUAN COMBINED CENTER RADAR APPROACH CONTROL
FACILITY SEISMIC UPGRADE PROJECT
CAROLINA, PUERTO RICO**

WHEREAS, the Federal Aviation Administration (FAA) has performed analysis of the San Juan Combined Center Radar Approach Control (ZSU CERAP) facility's risks related to seismic events. Due to facility's location within a zone of high probability for seismic events, the FAA determined to undertake a seismic upgrade at the Facility; and

WHEREAS, the FAA is subject to mandates and policies regarding seismic risks, including Executive Order (EO) 12941, "Seismic Evaluation of Existing Federally Owned or Leased Buildings" and the Department of Transportation (DOT) Policy SS-98-01, "DOT Policy for Seismic Safety of New and Existing DOT Owned or Leased Buildings," both of which require agencies to assess owned and leased buildings, estimate mitigation costs, and mitigate unacceptable seismic risks. The ZSU CERAP is a group of federally owned buildings subject to the above-mentioned mandates and policies. The ZSU CERAP was evaluated in accordance with these policies and mandates; and

WHEREAS, the ZSU CERAP was determined to have significant seismic deficiencies, failing to meet the Basic Safety Objective for seismic performance as required in the Federal Emergency Management Agency (FEMA) Standard 356. Several scenarios to reduce the impact of seismic events on the facility were examined, and the cost of remediation of the ZSU CERAP Administration Building (Administration Building) was estimated at \$6,082,000 in 2006; and

WHEREAS, demolition of the Administration Building was initially recommended due to the estimated cost of remediation, and the Administration Building failed to meet the life safety or collapse prevention criteria of FEMA Standard 356 and the American Society of Civil Engineers (ASCE) Standard 41, "Seismic Rehabilitation of Existing Buildings" in a 2010 reevaluation. The 2010 reevaluation also found that there was a high likelihood of structural failure, even after intensive and costly seismic upgrades, and demolition of the Administration Building was again recommended; and

WHEREAS, in accordance with Section 310 (1) and (n) of FAA Order 1050.1E, *Environmental Impacts: Policies and Procedures*, the ZSU CERAP Facility Seismic Upgrade Project was determined to be Categorically Excluded from in-depth National Environmental Policy Act (NEPA) analysis, and a Categorical Exclusion document was approved on May 11, 2011. Although the National Historic Preservation Act (NHPA) was deemed to apply, a Notice to Proceed was issued, in June 2011 for the ZSU CERAP Facility Seismic Upgrade Project, including demolition of the Administration Building, prior to consultation with the Puerto Rico SHPO or public; and

WHEREAS, demolition of the Administration Building began in November 2011; and

WHEREAS, in April 2012, the Puerto Rico State Historic Preservation Office (SHPO) advised the FAA and the Advisory Council on Historic Preservation (ACHP) that the FAA sponsored activities at the CERAP may be subject to the requirements of Section 106. Historic consultants subsequently

reported to FAA their finding that the Administration Building was eligible for listing in the NRIIP, and a Stop Work order was issued in May 2012 to allow for completion of the Section 106 process; and

WHEREAS, consultation with the public took the form of engaging the Municipality of Carolina, and other interested parties identified during the process including the Universidad de Puerto Rico (Recinto de Rio Piedras), the Instituto de Cultura Puertorriqueña, the Puerto Rico Historic Buildings Drawing Society, the Polytechnic University of Puerto Rico's School of Architecture, the Colegio de Arquitectos y Arquitectos Paisajistas de Puerto Rico, Warren A. James Architects + Planners, and Jorge Suarez Caceres (former Senador por Acumulacion). The FAA invited these entities to participate as consulting parties in the 106 review process; and

WHEREAS, the Administration Building is located within the San Juan Combined Center Radar Approach Control Facility Seismic Upgrade Project's Area of Potential Effects (APE) which, for the subject project, is limited to the footprint of the ZSU CERAP facility (that is, the area within the security fence surrounding the ZSU CERAP) and surrounding areas outside the fence line that are within the viewshed of the facility. The work being performed under the project impacts three buildings within the ZSU CERAP facility: Administration, Operations, and Mechanical. The Mechanical and Operations Buildings were determined not eligible by the Keeper of the NRIIP under either Criterion A or Criterion C due to a lack of integrity; and the Administration Building was determined eligible for listing in the NRHP by the Keeper of the National Register under Criterion C and Criteria Consideration G as a significant example of New Formalist design; and

WHEREAS, the FAA revised the scope of work for the seismic upgrade of the ZSU CERAP to address the rehabilitation of the Administration Building rather than its demolition. The revised scope of work includes removal of the interior walls, ceilings, floor coverings, HVAC ductwork, electrical conduits and fixtures, cable trays, and vertical precast concrete panels around the roof perimeter. Several of these items have already been completed that include removal of covered connecting passage, concrete roof panels, and interior finishes; and

WHEREAS, an Assessment of Effects (AOE) was completed on March 30, 2016, for the San Juan Combined Center Radar Approach Control Facility Seismic Upgrade Project with a finding of Adverse Effect relating to the demolition of the Administration Building; and

WHEREAS, in accordance with 36 Code of Federal Regulations (CFR) § 800.6(a)(1), the FAA notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation, and the ACHP has chosen to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

WHEREAS, the signatories of this MOA are the FAA, SHPO and ACHP and the concurring parties are identified as the Instituto de Cultura Puertorriqueña, Colegio De Arquitectos Y Arquitectos Paisajistas De Puerto Rico; and Warren A. James Architects + Planners.

NOW, THEREFORE, FAA, SHPO, and ACIP agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

Stipulations

FAA shall ensure that the following measures are carried out.

1. REHABILITATION OF ADMINISTRATION BUILDING

FAA has determined that the appropriate treatment of the Administration Building, per the Secretary of the Interior's Standards for the Treatment of Historic Properties, is the rehabilitation and seismic upgrade of the building. FAA shall ensure the following measures will be planned, developed, and executed as part of the rehabilitation, and reviewed by consulting parties so that their comments will be considered:

- 1) The rehabilitation of the Administration Building shall be planned, developed and executed consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties. FAA will submit to the SHPO and concurring parties the rehabilitation design and construction progress reports for review and comments. If comments produced from these progress reports result in any design changes to subsequent plans or drawings, then the FAA will initiate the following steps, which steps shall also apply to the final project design:
 - a) Subsequent plans, drawings, and final design necessary to complete the rehabilitation will be distributed to the signatories and concurring parties for review and comment. SHPO, and concurring parties will provide written comments on these subsequent plans, drawings, or final design to FAA within thirty (30) calendar days of receipt.
 - b) Concurring parties' comments to subsequent plans, drawings, or final design shall be advisory in nature and shall be considered and, where appropriate, incorporated into the plans, drawings or final design.
 - c) If SHPO fails to provide comments on subsequent plans, drawings, or final design within the time period prescribed above, these will be deemed final.
 - d) If FAA objects to any comment provided by the SHPO, FAA may proceed with construction as proposed, but FAA shall promptly provide SHPO with a written explanation of the reason for its objection to the comment(s) and, if necessary, shall initiate informal consultation with SHPO to attempt to resolve SHPO's concerns about FAA's objection. The SHPO or concurring parties may object FAA's decision pursuant to Stipulation 3 (Dispute Resolution) below.

- 2) FAA shall ensure that all historic preservation work performed by FAA or on its behalf pursuant to this MOA shall be accomplished by or under the direct supervision of a person or persons who meet(s) or exceed(s) the pertinent qualifications in the Secretary of the Interior's Professional Standards (36 CFR 61) in those areas in which the qualifications are applicable to the specific work to be performed.

2. UNANTICIPATED ADVERSE EFFECTS AND EMERGENCIES

If FAA determines that an emergency or unanticipated conditions may result in, or has resulted in, an unanticipated adverse effect to the historic property, FAA shall ensure that SHPO is notified in accordance with Section 36 CFR §800.12 of the ACHP's regulations.

3. DISPUTE RESOLUTION

Should the SHPO or Concurring Parties object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the signatories shall consult to resolve the objection. If FAA determines that such objection cannot be resolved, FAA shall:

- 1) Forward all documentation relevant to the dispute, including FAA's proposed resolution, to the ACHP. The ACHP shall provide FAA with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FAA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and SHPO, and provide them with a copy of this written response. FAA will then proceed according to its final decision.
- 2) If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, FAA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FAA shall prepare a written response that takes into account any timely comments regarding the dispute from SHPO and provide SHPO and the ACHP with a copy of such written response.

4. AMENDMENTS

FAA, SHPO, or the ACHP may propose that this MOA be amended, whereupon the Signatories will consult to consider such amendment in writing. Any agreed upon amendment shall take effect on the date a signed fully executed amendment is filed with the ACHP.

5. DURATION OF THIS MOA

This MOA shall remain in force until one of the following occurs: (1) the completion of the rehabilitation; (2) December 31, 2024; (3) termination of this MOA as provided below. Prior to such time, Signatories may extend the duration of the Agreement through an amendment as outlined in Stipulation 4, above.

6. EFFECTIVE DATE OF THIS MOA

This MOA shall take effect on the date the final Signatory signs the MOA. The FAA will provide a copy of the executed MOA to all Signatories and Concurring Parties.

7. TERMINATION

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation 4, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories. Once the MOA is terminated, and prior to work continuing on the undertaking, the FAA must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. The FAA shall notify the signatories as to the course of action it will pursue.

Execution of this MOA by the Signatories and implementation of its terms, is evidence that the FAA has afforded the ACHP an opportunity to comment on the ZSU CERAP San Juan Combined Center Radar Approach Control Facility Seismic Upgrade Project, Carolina, Puerto Rico, and its effects on historic properties, and that FAA has taken into account the effects of the undertaking on historic properties.

SIGNATORIES

FEDERAL AVIATION ADMINISTRATION

BY: Mary K. Sherer DATE: 8/28/17
Mary K. Sherer, Director, Technical Operations, LSA

PUERTO RICO STATE HISTORIC PRESERVATION OFFICER

BY: Carlos A. Rubio-Cancela DATE: 8/28/17
Carlos A. Rubio-Cancela, State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY: John M. Fowler DATE: 8/31/17
John M. Fowler, Executive Director, ACHP

CONCURRING PARTIES:

INSTITUTO DE CULTURA PUERTORRIQUEÑA

BY: _____ DATE: _____
Carlos R. Ruiz Cortes, Executive Director, Instituto de Cultura Puertorriqueña

COLEGIO DE ARQUITECTOS Y ARQUITECTOS PAISAJISTAS DE PUERTO RICO

BY: _____ DATE: _____
Ivonne Maria Marcial Vega, President of the CAAPPR

WARREN A. JAMES ARCHITECTS + PLANNERS

BY: _____ DATE: _____
Warren A. James, AIA, LEED