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**Commonwealth of Puerto Rico
Department of Natural and Environmental Resources
San Juan, Puerto Rico**

Contrato # 133-04-000669

AGREEMENT

Registro # 23-6-04

STATUS AND IMPACT OF CORAL DISEASES IN PUERTO RICAN CORAL REEFS

THIS AGREEMENT for the implementation of the Proposal entitled "Status and Impact of Coral Diseases in Puerto Rican Coral Reefs" (the "Agreement") is made effective as of this June 23, 2004 (the "Effective Date"), by and between the Department of Natural and Environmental Resources of Puerto Rico, represented by its Natural Resources Administrator, Fernando Vargas Arroyo, an instrumentality of the Commonwealth of Puerto Rico (hereinafter referred to as the "DEPARTMENT"), and UNIVERSITY OF PUERTO RICO, MAYAGÜEZ, CAMPUS (hereinafter referred to as "UPRM") represented by Dr. Jorge Iván Vélez-Arocho,

WHEREAS, The DEPARTMENT is authorized by Act Number 23 of June 20, 1972, as amended, to contract those services necessary to accomplish the mandate it has been given.

WHEREAS, The DEPARTMENT has the responsibility of knowing the condition of Puerto Rico's natural resources, including coral reefs, in order to protect, preserve and dictate public policy about them. Such call to action is also expressed in Act Number 147 of 1999, in the Federal Coral Reef Act, and in the US National Coral Reef Action Plan and Strategy. Besides, diseases on coral organisms have been identified as one of the major threats to coral reefs in the United States.

WHEREAS, The DEPARTMENT needs to acquire scientific data about coral reef organisms and the status and impact of diseases in Puerto Rican coral reefs (the "Needed Information") in order to implement management options.

WHEREAS, The UPRM has the experience and knowledge to bring to the DEPARTMENT the needed information.

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements set forth herein, the parties agree as follows:

TERMS AND CONDITIONS

1. UPRM Responsibilities

- a. Performance of the Work. The UPRM agrees to perform the Work (as defined herein below) described in the proposal entitled "Status and Impact of Coral Diseases in Puerto Rican Coral Reefs" (the "Proposal"), prepared by Ernesto Weil 1, Ph.D. (PI), from the Department of Marine Sciences of the University of Puerto Rico, Mayaguez Campus and Edwin Hernandez-Delgado 2, Ph.D. (Co-PI).
- b. Scope of Work. The major objectives of this project are: (a) the assessment of the current status of coral reef diseases in Puerto Rican Reefs (i.e. the identification of the different diseases present in different reef sites, their prevalence, and the number of species affected); (b) the assessment of the impact of diseases on Puerto Rico reefs (estimation of rates of tissue loss and total colony mortality in major species); (c) the characterization of the spatial variability within and across localities, and the seasonal variability (winter and summer) in the presence, prevalence and impact of each major disease/syndrome; (d) training of graduate students and (e) starting a monitoring program in key localities to keep track of the temporal dynamics and impact of the most important diseases and the emergence of new syndromes in coral reefs. At least 12 important reef sites will be surveyed in the east, south and west coasts and in some of the offshore islands using the CARICOMP disease protocols

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Surveys will be conducted in La Parguera, Culebra and Desecheo islands. Training of graduate students in all aspects of field recognition and sampling of coral diseases and how to measure impact at the colony and population levels will be carried out. At least 6 reefs will be surveyed in La Parguera within an inshore-offshore transect (two reefs close to the coast, two in the mid-shelf area, and two at the edge of the insular platform). One reef each will be sampled in Culebra and in Desecheo islands respectively. Four 10m long x 2m wide (20 sqm) and transects in each of four depth intervals (0-3; 3-10; 10-15 and > 15 m) in reefs with a profile will be surveyed to assess the number and spatial distribution of diseases, the disease prevalence at the population level and the incidence at the community level. Colonies of the most affected species will be tagged along the transects and the disease-healthy tissue edge marked with concrete nails to follow rates of tissue loss. All these reefs will have permanent band transects (tagged re-bars) and will be surveyed again during the winter months (January March 2004) to assess temporal variability in the number and distribution of diseases, their prevalence and impact at the colony and population levels.

Several other localities in the east (Fajardo), south east (Jobos) and south (Caja de Muertos in Ponce and two reefs in Guánica) coasts will be surveyed together with the ones mentioned above to assess the spatial variability in the number and distribution of diseases and their prevalence and impact at the colony and population levels. All tagged colonies will be checked and the rates of tissue and colony mortality estimated after measuring the distance from the nail to the current edge of the disease and healthy tissue.

The funds requested for the initial part of the project (first payment) include all funds for equipment and materials (\$5,000), funds to cover transportation and diving cost to the different localities (\$14,000), graduate student salaries (\$20,000), and half the salaries of the Principal Investigators (\$14,000). These add up to \$53,000.00. The difference (\$22,000) which includes travel funds for conferences, funds for maintenance of equipment, communications and publications, and the rest of the PI salaries will be paid after the progress report is submitted in April of 2004.

c. Progress Report: A progress report will be submitted no later than April of 2004, with nine hard copies and five copies in CD-ROM. The report should give credit to the National Oceanic and Atmospheric Administration (NOAA), and to the DEPARTMENT, as sponsors of the project. The Report shall include the NOAA Award Number NA03NOS4260023 in their content, as a reference to the funding source.

d. Final Report. As part of this Agreement, the UPRM will submit to the DEPARTMENT the final report no later than three weeks after the Award ending period, so there will be enough time to organize, edit and work with the data and analyze the results. At least one manuscript will be sent to a peer reviewed journal and additional funds will be requested in a follow up proposal to continue with the monitoring program for at least five more years. The UPRM will provide the DEPARTMENT with eight hard copies and five copies in CD-ROM of the final report. The Report should give credit to NOAA, and to the DEPARTMENT, as sponsors of the project. Both invoices and the Report shall include the NOAA Award Number NA03NOS4260023 in their content, as a reference to the funding source.

e. Personnel. The UPRM shall designate Dr. Ernesto Weil, from the Department of Marine Sciences of the University of Puerto Rico, Mayaguez Campus as Principal Investigator. Dr. Weil shall be responsible for conducting the Work by the UPRM and shall not be replaced without the prior written approval of the DEPARTMENT. The UPRM shall not change any element of the Proposal without the prior written consent of the Department. The parties hereto acknowledge and agree that if Dr. Weil is not able to provide the services required under this Agreement, the Department may, at its sole discretion, immediately terminate this Agreement.

f. Payment. The Department will pay to the UPRM the total amount of \$75,000. Payment will be made as follows: an initial payment of \$53,000.00 upon presentation of the first

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- g. invoice; and a final payment of \$22,000.00 following the acceptance of the final Report and invoice. The funding source for this project is the NOAA Award Number NA03NOS4260023, known as the "Puerto Rico Competitive Monitoring Proposal 2002-2003". Both invoices and the Reports shall include such information in their content, as a reference to the funding source.
- h. Audit. Notwithstanding any other provisions of this Agreement, the books and records of the UPRM will be made available upon request for audit by personnel authorized by the DEPARTMENT at the UPRM's regular place of business. In addition, financial records, supporting documents and other records pertinent to this Agreement shall be retained by the UPRM for a period of three years from the date of submission of the final expenditure report. The foregoing notwithstanding, the period of access and examination described above for the records which relates to 1) litigation or settlement, or 2) cost and expenses of this contract as to when exception has been taken by the DEPARTMENT shall continue until such litigation, claims or exceptions have been disposed.

2. Responsibilities of the Department

The DEPARTMENT shall designate a representative to coordinate the work comprised in the Agreement. This representative, through whom the UPRM will communicate with the DEPARTMENT, shall have complete authority to receive and deliver information, issue instructions, make decisions, and to furnish, at no cost to the UPRM, the following services in connection with the work to be performed under this Agreement:

- a.- Coordinate plan of the Work with the UPRM.
- b.- Review progress of Work.
- c.- Certify completion of the Work and certify invoices.

3. Term

The term of this Agreement shall commence upon the Effective Date and, unless terminated earlier as provided herein under Section 4 ("Cancellation and Termination"), shall expire on the ending period of the referenced NOAA Award.

4. Cancellation and Termination

(a) Termination by either Party with or without cause. UPRM may terminate this Agreement, with or without cause, by giving the DEPARTMENT sixty (60) days advance notice of its intent to terminate. The DEPARTMENT may terminate this Agreement for any reason, with or without cause, upon fifteen (15) days written notice to UPRM, in which event the DEPARTMENT will not incur any obligation or liability except to compensate UPRM for the services provided up to the effective date of the termination.

(b) Termination for Breach. Except as expressly provided elsewhere in this Agreement, either Party may terminate this Agreement at any time in the event of a material breach of the Agreement by the other Party. The negligent fulfillment of its obligations or the default of the same by the UPRM will be considered a breach of this Agreement and will constitute sufficient cause for the DEPARTMENT to declare the same terminated and, without limitation and notwithstanding any rights to the contrary, the DEPARTMENT will be relieved or discharged of any obligation or liability thereby arising.

Termination shall have no effect on the parties' rights and obligations under Section 5 ("Indemnification for Liability").

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4. UPRM Warranties

The UPRM certifies and warrants that is in compliance with the following:

A. Equal Employment Opportunity: The UPRM certifies that is in compliance with the provisions of Executive Order 11246 "Equal Employment Opportunity" as amended, and as supplemented by regulations at 41 CFR part 60.

B. Insurance: The UPRM certifies that maintains worker's compensation insurance covering all THE UPRM employees working under this contract.

C. Drug Free Workplace: The UPRM certifies that it is in compliance with the Drug Free Workplace Act (PL 100-690).

5. Indemnification for Liability

The UPRM agrees to indemnify, defend, and hold harmless the DEPARTMENT, its employees and representatives from any and all claims, injuries, actions or causes of actions, damages or losses including without limitation, all attorneys fees and costs, and including death to persons or damage to property negligently caused by an act or omission by the UPRM, its agents, servants, or employees during the period of this contract. The DEPARTMENT agrees to indemnify, defend, and hold harmless the UPRM, its employees and representatives from any and all claims, injuries, actions or causes of actions, damages or losses including without limitation, all attorneys fees and costs, and including death to persons or damage to property negligently caused by an act or omission by the DEPARTMENT, its agents, servants, or employees during the period of this contract.

6. Interest of Public Employees

The parties make it known that no public officer or employee has any direct or indirect interest in the proceeds derived from this contract.

7. Miscellaneous

- a. Further Agreements. The parties hereto agree to perform any further acts and execute and deliver any additional agreements, assignments or documents that may be reasonably necessary to carry out the provisions or to effectuate the purpose of this Agreement.
- b. Survival of Obligations. All rights and obligations that by their nature continue beyond termination shall survive any termination, including without limitation, RCM's indemnification obligation, and any payments to be made by RCM.
- c. No Assignment. This Agreement shall not be transferable or assignable by operation of law or otherwise without the prior written consent of the DEPARTMENT and UPRM. This Agreement shall be construed to have been drafted by all parties such that any ambiguities shall not be construed against either party. Except as provided in this Agreement, subcontracting, assignment or transfer of all or part of the UPRM rights including moneys due, or retained, by DEPARTMENT, interests and/or obligations under this contract is prohibited without the prior written consent of the DEPARTMENT; provided, however, that such consent if given, shall not release the UPRM from any of its obligations under this Agreement and shall remain liable and responsible for the proper performance of the assigned, subcontracted or transferred right of obligation. The proven illegality of this provision shall not invalidate the contract as a whole.

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- d. Independent Contractors. Each party and its people are independent contractors in relation to the other party with respect to all matters arising under this Agreement. Nothing herein establishes a partnership, joint venture, association or employment relationship between the parties or any exclusive course of dealing.
- e. Severability. Any provision hereof found by a court of competent jurisdiction to be illegal or unenforceable shall be automatically conformed to the minimum requirements of law and all other provisions shall remain in full force and effect.
- f. Entire Agreement. This Agreement contains the entire understanding of and all agreements between the parties hereto with respect to the subject matter hereof

and supersedes any prior or contemporaneous agreement or understanding, oral or written, pertaining to any such matters which agreements or understandings shall be of no force or effect for any purpose. This Agreement may not be amended or supplemented in any manner except by mutual agreement of the parties and as set forth in a writing signed by the parties hereto or their respective successors in interest. Any amendment to this Agreement shall be subject to the approval of the necessary government agencies, and shall be executed at least 15 days before the termination date.

- g. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- h. Headings. The headings used in this Agreement are inserted for purposes of convenience of reference only and shall not limit or define the meaning of any provisions of this Agreement.
- i. Waiver. The waiver of any breach of any provision under this Agreement by any party shall not be deemed to be a waiver of any preceding or subsequent breach under this Agreement. No such waiver shall be effective unless in writing.
- j. Ultravires. According to law and to the rules about contracting services, the parties of this contract, know that no service will be provided until this contract get signed by both parties. No service will be provided after its expiration date, except that the parties sign an amendment. Any provided service against this clause will not be paid, because any employee that request or accept services under such circumstances will be doing so without legal authority.
- k. Notices. All notices, requests, demands, consents and other communications given or required to be given under this Agreement and under the related documents shall be in writing and delivered to the applicable party at the address indicated below:

If to Department:

Department of Natural and Environmental Resources
 P.O. Box 9066 500, Puerta de Tierra Station, San Juan-PR 00906-6600
 Attention: A representative to be later determined

If to UPRM:

University of Puerto Rico, Mayagüez Campus
 P.O. Box 9000, Mayagüez-P.R. 00681-9000
 Attention: Dr. Ernesto Weil, PI

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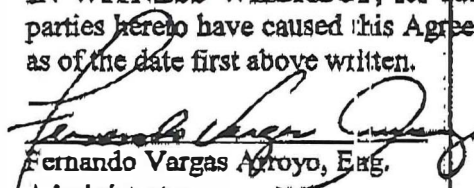
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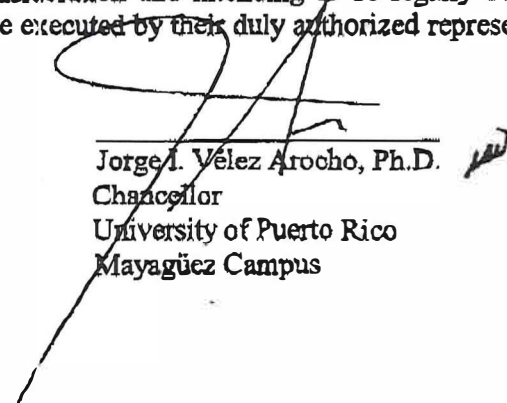
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or, as to each party, at such other address as shall be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section. Any notices shall be in writing (which may include facsimile or electronic mail communication), and may be sent by registered or certified mail, return receipt requested, postage prepaid, or by fax or electronic mail, or by overnight delivery service. Notice shall be effective upon actual receipt thereof. Any payments sent by and between the parties shall be hand delivered or mailed by regular mail to the addresses set forth hereinabove.

IN WITNESS WHEREOF, for adequate consideration and intending to be legally bound, the parties hereto have caused this Agreement to be executed by their duly authorized representatives, as of the date first above written.



Fernando Vargas Arroyo, Eng.
Administrator
Natural Resources Administration
Department of Natural and
Environmental Resources



Jorge I. Vélez Arocho, Ph.D.
Chancellor
University of Puerto Rico
Mayagüez Campus