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**CONVEYANCE AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
ACTING BY AND THROUGH
THE
UNITED STATES DEPARTMENT OF ENERGY
AND
INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO
PURSUANT TO 42 U.S.C. §2391 Note
LOS ALAMOS, NEW MEXICO**

10/24/2002 PAGE 0675



STATE OF NEW MEXICO
COUNTY OF LOS ALAMOS ^{ss.}
DOC. 160479
DATE September 24 2002
TIME 4:03 P M.
BOOK 106 PAGE 675
COUNTY CLERK Nita K. Taylor
DEPUTY Sheryl Nichols



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**CONVEYANCE AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
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UNITED STATES DEPARTMENT OF ENERGY
AND
INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO
PURSUANT TO 42 U.S.C. §2391 NOTE**

12 This Conveyance Agreement (hereinafter referred to as the "Agreement") is entered into
13 this *23rd* day of September 2002 (the "Effective Date"), between the **UNITED STATES OF**
14 **AMERICA**, acting by and through the Department of Energy (the "DOE"), and the
15 **INCORPORATED COUNTY OF LOS ALAMOS COUNTY, NEW MEXICO** (the
16 "County"). DOE and the County are each sometimes referred to herein individually as a "Party"
17 and collectively as the "Parties."
18
19

20
21

RECITALS

22
23

WHEREAS:

24 1. DOE is the owner of approximately two-thousand five hundred (2,500) acres of
25 real property consisting of twenty (20) parcels, as described and depicted in Exhibits "A-1,"
26 through "A-20," respectively, attached hereto and made a part hereof, improvements and other
27 rights appurtenant thereto, located in Los Alamos County, New Mexico (the "DOE Property").
28

29 2. DOE has the authority to convey the DOE Property to the County or the County's
30 designee under the Atomic Energy Act of 1954, Section 161(g), 42 U.S.C. §2201(g); and the
31 Secretary of Energy is required to convey the Property pursuant to Section 3165 of Public Law
32 105-119, 42 U.S.C. §2391 note (the "Land Transfer Law") to the County, at no cost to the
33 County.

34 3. Pursuant to the Land Transfer Law, the County has identified the New Mexico
35 Highway Department as its designee for approximately two hundred (200) acres of real property,
36 as described and depicted on Exhibit "K" this acreage being in addition to the DOE Property.
37

38 4. Pursuant to the Land Transfer Law, DOE has withheld approximately seven
39 hundred (700) acres of real property due to national security mission needs, as described and
40 depicted on Exhibits "A-5," "A-16" and "A-20."
41

42 5. The County has authority to accept such conveyance under N.M. Const., Art. X §
43 5 and §§ 3-18-1, *et seq.* N.M. Stat. Ann. 1978.

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1
2 6. DOE and the County desire to set forth in this Agreement the commitments and
3 actions necessary to be carried out or completed for the conveyance of the Property from DOE to
4 the County.

5
6 **AGREEMENTS**
7

8 **NOW, THEREFORE**, in consideration of the foregoing premises and the respective
9 representations, agreements, covenants and conditions herein contained, and other good and
10 valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DOE and
11 the County agree as follows:
12

13 **ARTICLE 1. Definitions**
14

15 (a) **Closing**. The transactions by which each of the Parcels (as defined herein)
16 and other portions of the Property shall be conveyed to the County. The Parties contemplate that
17 there will be multiple Closings, including an Initial Closing and Subsequent Closings.
18

19 (b) **Determination of Conveyance**. DOE determination that property is
20 suitable for conveyance pursuant to CERCLA §9620(h), the Parcel has been remediated to the
21 level that permits the land use(s) set forth in Article 8(b), and the necessary cultural and historic
22 legal requirements have been fulfilled.

23 (c) **Environmental Remediation**. Action by DOE pursuant to applicable
24 federal, state, and local laws, regulations and DOE Orders including without limitation, the
25 Comprehensive Environmental Response, Compensation and Liability Act, as amended
26 ("CERCLA") and the Resource Conservation and Recovery Act ("RCRA"), to remediate the
27 property to a level that will permit DOE to issue its Determination of Conveyance.
28

29 (d) **Initial Closing**. The date on which the first Parcel(s), necessary Access
30 Easements and other Easements and additional items will be conveyed or assigned to the County
31 pursuant to Article 9.
32

33 (e) **LIFOC**. The Lease In Furtherance of Conveyance of Parcels not conveyed
34 to the County, as identified by the County, in accordance with Article 4 in substantially the form
35 of Exhibit "B-1," attached hereto and made a part hereof
36

37 (f) **Personal Property**. That certain tangible and intangible personal property
38 located on each Parcel.
39

40 (g) **Property**. The real property consisting of approximately one thousand eight
41 hundred (1,800) acres of land, consisting of seventeen (17) parcels, more particularly described and

LAND TRANSFER CONVEYANCE AGREEMENT

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1 delineated in Exhibits "A-1," "A-2," "A-3," "A-4," "A-6," "A-7," "A-8," "A-9," "A-10," "A-11," "A-
2 12," "A-13," "A-14," "A-15," "A-17," "A-18," and "A-19," attached hereto, (collectively referred
3 to as the "Parcels" and individually as a "Parcel") which shall include, but shall not be limited to:

4
5 1. All buildings, facilities, roadways, and other infrastructure,
6 including the storm drainage systems and the utility system infrastructure, and any other
7 improvements thereon (including all replacements or additions thereto between the date
8 of this Agreement and the date of conveyance of the Property to the County); and

9
10 2. All easements and other rights appurtenant thereto, including
11 easements and rights appurtenant thereto, licenses, privileges not otherwise excluded
12 herein, and the permits; and

13
14 3. All hereditaments and tenements therein and reversions,
15 remainders, issues, profits, privileges and other rights belonging or related thereto; and

16
17 4. all rights to minerals, gas, oil, water, and similar rights.

18
19 (h) Quitclaim Deed(s). Those certain recordable quitclaim deeds conveying
20 ownership of the Property in fee simple to the County, in the form attached hereto and made a
21 part hereof as Exhibit "C-1" for the Initial Closing Parcels and Exhibit "C-2" as a model for each
22 Subsequent Closing. Each Quitclaim Deed shall include all necessary easements over roads and
23 other areas of the Property owned by DOE that may be required for access for purposes of
24 development and use of the Parcel conveyed by such Quitclaim Deed.

25
26 (i) Subsequent Closing. Each Closing after the Initial Closing.

27
28 (j) Title Insurer. Such title insurance companies as the County shall from
29 time to time designate.

30
31 (k) Title Policy. The American Land and Title Association ("ALTA")
32 extended coverage owner's title insurance policy and endorsements thereto, as the County may
33 reasonably require, subject only to the Permitted Title Exceptions (Exhibit "I"), insuring the
34 County's interest in the Property, which shall be as fee simple owner to the Property conveyed to
35 the County by Quitclaim Deed for each Parcel or in connection with each Closing.

36
37 **ARTICLE 2. Property Description.**

38
39 (a) Pursuant to the authority of 42 U.S.C. §2391 note, DOE agrees to transfer and
40 convey the Property to the County and the County agrees to acquire the Property from DOE, in
41 consideration of the covenants, conditions and restrictions contained herein and other good and
42 valuable consideration, subject to the terms, conditions and general provisions set forth in this

LAND TRANSFER CONVEYANCE AGREEMENT

Page 4

1 Agreement.

2
3 (b) DOE shall deliver to the County recordable metes and bounds property
4 descriptions of each Parcel along with a detailed legally sufficient survey, that has been
5 completed in accordance with State of New Mexico Law (the "Metes and Bounds Description").
6 DOE shall deliver the Metes and Bounds Description from the Parcels to be conveyed to the
7 County at the Initial Closing prior to or upon execution of this Agreement. The Metes and
8 Bounds Description for the Parcels to be conveyed to the County at each Subsequent Closing
9 shall be delivered by DOE to the County the earlier of: (i) ninety (90) days prior to the
10 conveyance of the Parcel in accordance with the schedule set forth in Article 5(a); or (ii) twelve
11 (12) months after the execution of this Agreement. Each Metes and Bounds Description shall be
12 consistent with the pertinent Parcel description attached hereto and agreed to, in writing, by the
13 Parties.

14 15 **ARTICLE 3. Cultural Resources**

16
17 The Programmatic Agreement is attached hereto and made part hereof as Exhibit "E."
18 DOE shall use its best efforts to work with the County on cultural and historic issues on the
19 Property and to complete the cultural and historic activities on the Property in a timely manner
20 that will permit the County to acquire the Property consistent with the schedule set forth in
21 Article 6.

22 23 **ARTICLE 4. Lease In Furtherance of Conveyance**

24
25 (a) If the County requests, in writing to DOE, a lease in furtherance of and pending
26 conveyance on Parcel(s) ("LIFOC"), the County and DOE agree to work together to mutually agree
27 on a schedule to enter into such LIFOC. DOE shall use its best efforts to approve the County's
28 request, if DOE determines that no environmental, cultural and historic, financial or other
29 impediments ("Impediments") exist to transferring the requested Parcel(s) by LIFOC to the County.
30 If DOE determines that no such Impediments to leasing the Parcel(s) to the County exist, DOE
31 shall use its best efforts to transfer the Parcel(s) by LIFOC to the County within sixty (60) days of
32 such determination, or such other date as the Parties mutually agree. The LIFOC shall be in
33 substantially the form set in Exhibit B-1. If DOE determines that Impediments to leasing the
34 Parcel(s) to the County exist, DOE shall disclose those Impediments to the County in writing and
35 include an estimate of when the Parcel may be available for LIFOC and deed conveyance.

36
37 (b) DOE shall lease in furtherance of and pending conveyance Parcel A-4 commonly
38 referred to as the airport property pursuant to the terms and conditions set forth in as Exhibit "B-2,"
39 attached hereto (the "Airport LIFOC"). DOE and the County shall execute the Airport LIFOC upon
40 execution of this Agreement.

41
42

LAND TRANSFER CONVEYANCE AGREEMENT

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ARTICLE 5. Transfer and Conveyance.

(a) Schedule. DOE agrees to convey the Property to the County at multiple Closings, subject to DOE's Determination of Conveyance covering each Parcel or the subsection of a Parcel requested by the County. The schedule for the conveyance of each Parcel is dependent upon the completion of the Environmental Remediation and other activities by DOE and acceptance of the condition of each Parcel by the County. DOE shall complete the Environmental Remediation and execute the Determination of Conveyance for each Parcel in a timely manner. The Parties shall use their best efforts to complete a conveyance from DOE to the County for the Parcels in accordance with following schedule:

1. *Initial Closing*. The following Parcel(s) of Property will be conveyed to the County at the Initial Closing. The Initial Closing shall occur on or before the 31st day of October 2002 or thirty (30) days after the County accepts the condition of each Parcel following DOE's completion of Environmental Remediation and making a Determination of Conveyance covering each Parcel:

<u>Date</u>	<u>Parcel</u>	<u>Exhibit</u>
October 31, 2002	Manhattan Monument	A-1
	Site 22	A-2
	LAAO-1 (East)	A-12
	Airport-1 (East)	A-3
	Airport-4 (West)	A-6
	TA-74 (West)	A-17
	DP Road-2 (North)	A-9
	White Rock-1	A-19

2. *Subsequent Closings*. The remainder of the Property will be conveyed to the County consistent with the schedule set forth below or within thirty (30) days after the County accepts the condition of each Parcel following DOE's completion of Environmental Remediation and making a Determination of Conveyance covering each Parcel:

<u>Date</u>	<u>Parcel</u>	<u>Exhibit</u>
September 30, 2003	TA-74-2 (South)	A-18
	Airport-5 (Central)	A-7
	DP Road-1 (South)	A-8
	TA-21-1 (West)	A-15
September 30, 2005	LAAO-2 (West)	A-13
	Airport-2 (North)	A-4

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	DP Road-3 (East)	A-10
September 30, 2006	DP Road 4 (West)	A-11
September 30, 2007	Rendija Canyon	A-14

1
2
3 (b) Quitclaim Deeds. The Property shall be conveyed in fee simple by good
4 and sufficient Quitclaim Deeds for the conveyance of each Parcel, together with any necessary
5 access and utility easements that serve such Parcel in the form attached hereto and made a part
6 hereof as Exhibit "C-1" for the Initial Closing Parcels and "C-2" as a model for each subsequent
7 Closing.
8

9 (c) Environmental Condition. Each Parcel or subsection of a Parcel of the
10 Property shall be remediated to a level that will permit the conveyed Parcel to be utilized in a
11 condition that permits the land use(s) set forth below:
12

<u>Parcel</u>	<u>Description</u>	<u>Environmental Condition</u>
1) A-19	White Rock Parcel:	Residential Development Scenario
2) A-12 and A-13	LAAO Parcels:	Residential Development Scenario
3) A-18 and A-17	TA - 74 Parcels:	Cultural and Environmental Preservation scenario
4) A-14	Rendija Canyon Parcel:	Residential development Scenario
5) A8, A-9, A-10 and A-11	DP Road Parcels:	Commercial Development Scenario
6) A-3, A-4, A-6 and A-7	Airport Parcels:	Commercial Development Scenario
7) A-15	TA-21-1 Parcel (West):	Commercial and Industrial Development Scenario
8) A-1 and A-2	Manhattan Monument and Site 22 Parcels	To the use level required in 42 U.S.C. §2391 note

13
14 (d) Subparcels. The County may request that DOE convey one or more of the
15 Parcels in a reasonable number of subparcels. DOE and the County shall work together to
16 determine the feasibility of such sub-parcelization. If DOE requests that the County create the
17 land surveys, the County shall develop, at its own cost and expense, the land surveys required to
18 permit DOE to convey each subparcel, if the surveys do not exist.
19

LAND TRANSFER CONVEYANCE AGREEMENT

Page 7

1 (e) Preparation of Quitclaim Deeds. The Parties acknowledge that it is in
2 their mutual best interest to coordinate and cooperate in the preparation of the Quitclaim Deeds.
3 Accordingly, the Parties shall, to the maximum extent practicable, exchange information,
4 coordinate the drafting of the Quitclaim Deeds, and conclude the review of documents as rapidly
5 as possible.

6 (f) Personal Property. The Personal Property located on a Parcel shall be
7 deemed abandoned in place by DOE at the time of conveyance by Deed or LIFOC from DOE to
8 the County. DOE's right, title and interest in such Personal Property shall be extinguished at
9 such time unless the County within ten (10) days after conveyance of such Parcel, notifies DOE
10 that it must remove such Personal Property for the Parcel. If DOE does not remove such
11 Personal Property within thirty (30) days after such notification from the County, DOE shall
12 reimburse the County for all reasonable expenses that the County incurs in disposing of such
13 Personal Property, if any, subject to DOE's availability of funds.

14
15 (g) County Scope of Work. DOE shall complete the scope of work attached
16 hereto as Exhibit "D" and made part hereof (the "Scope of Work") on Parcels "A-13" and "A-
17 19" at DOE's sole cost and expense on or before: (i) June 30, 2003 for Parcel "A-19" and (ii)
18 September 30, 2006 for Parcel "A-13;" (which can include contracting with the County to
19 complete the Scope of Work in accordance with a schedule and contract agreed upon in writing
20 by the Parties).

21
22 (h) Roads. DOE agrees to convey the real property set forth and described in
23 Exhibit "K," attached hereto (the "Road Parcels") to the State of New Mexico Highway and
24 Transportation Department before December 2003. If DOE does not convey the Road Parcels to
25 the State of New Mexico Highway and Transportation Department, then DOE shall convey the
26 Road Parcels to the County or its designee pursuant to 42 U.S.C. §2391 note before or at the final
27 Closing.

28
29 (i) Withheld Property. As contemplated by the Land Transfer Law, if DOE
30 determines that the parcels of real property commonly referred to as TA-21-2 (East), Airport 3
31 (South), and White Rock Y-2 parcels as set forth and described in Exhibits "A-5," "A-16" and
32 "A-20," respectively, attached hereto, are no longer required to support a national security
33 mission, and DOE can complete the required remediation of the contamination on the real
34 property before the expiration of the Land Transfer Law then DOE will convey those parcels of
35 real property to the County or any other parcels of real property eligible for conveyance from
36 DOE to the County pursuant to Land Transfer Law.

37
38 (j) Access for Testing. From the Effective Date of this Agreement to the final
39 subsequent Closing, DOE agrees to provide the County or its designated representative(s) with
40 access to and entry upon the Property and the improvements thereon to conduct environmental,
41 soil, geo-technical and/or infrastructure investigations, measurements and testing. In exercising
42 the right of entry granted by this section, the County shall: 1) provide reasonable notice to the

LAND TRANSFER CONVEYANCE AGREEMENT

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1 DOE of the date, time, persons, and purpose of the proposed entry; 2) ensure that any activities
2 on the Property do not interfere with DOE operations or activities; and 3) comply with terms and
3 conditions specified by the DOE (including reasonable insurance requirements), which the DOE
4 agrees it shall not unreasonably impose.

6 ARTICLE 6: County's Acceptance of Property.

7
8 (a) Before each Closing, the County shall have the right to review the title and
9 environmental and physical condition of each Parcel or sub-Parcel to be conveyed at such
10 Closing. If the County has an objection as to the title, as set forth in Article 13 or the
11 environmental or physical condition of such Parcel or sub-Parcel, the Closing shall be postponed
12 until such time as the title or condition of the Parcel is remedied to the satisfaction of the County
13 in accordance with this Agreement. The County shall provide any objections as to the
14 environmental or physical condition of the Parcel or sub-Parcel to DOE in writing within thirty
15 (30) days after DOE tenders the Property to the County.

16
17 (b) **Minimum Property Conditions.** The following are the minimum
18 Property Conditions that are acceptable to the County for conveyance for the following described
19 Parcels, in addition to the required environmental remediation and remediation of historic and
20 cultural sites:

- 21
22 1. *DP Road (Exhibit "A-11")* - Removal of radioactive liquid waste
23 line and remediation of any contamination,
24
25 2. *TA-21 (West) (Exhibit "A-15")* - Removal of the liquid radioactive
26 waste line and remediation of environmental contamination.

27 ARTICLE 7. Easements and Licenses.

28
29 (a) Access Easements. DOE shall grant to the County easement(s) over DOE
30 property that DOE and the County determine are reasonably required for the development, use or
31 occupancy of any Parcel conveyed to the County, such as, but not limited to, roads, and which do
32 not unduly conflict with DOE's activities or responsibility to protect human health and the
33 environment or to conduct investigation or remediation activities substantially in the form set
34 forth in Exhibit "F-1," attached hereto ("Access Easement").
35

36
37 (b) Assignment of Easements. DOE shall either assign to the County any
38 easements or a right to utilize the easements held by DOE over, under, or through non-DOE
39 property necessary for the operation, maintenance, or improvement of utility infrastructure
40 systems required for the operation of those portions of the Property conveyed to the County
41 substantially in the form set forth in Exhibit "F-2," attached hereto ("Assignment of Easement").

LAND TRANSFER CONVEYANCE AGREEMENT

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1 To the extent such easements or easement rights are not assignable by DOE, DOE will cooperate
2 with the County to acquire from such property owner(s) the necessary access rights.

3 (c) Access Agreement. Where DOE requests access to County owned real
4 property the Parties shall utilize the agreed upon procedures for granting such access pursuant to
5 the Access Agreement dated July 11, 2002.

6 **ARTICLE 8. Closing and Settlement.**

7
8 (a) General Conditions to any Closing .

9
10 1. *County's Conditions*. The obligations of the County to acquire any Parcel and
11 related Property, and to perform the actions that constitute any Closing, including the
12 Initial Closing and all Subsequent Closings, are subject to the satisfaction, on or before
13 the applicable Closing Date, of the following conditions ("County's Conditions"):

- 14
15 (i) Conveyance Documents. DOE has duly executed and authorized
16 counterpart originals of each of the documents described in subsections (c)
17 for the Initial Closing and (d) for each Subsequent Closing;
- 18 (ii) DOE Performance. DOE is not in default in the performance of any
19 material covenant or obligation to be performed by DOE under this
20 Agreement and all of DOE's representations and warranties contained in
21 or made pursuant to this Agreement shall have been true and correct when
22 made and shall be true and correct as of such Closing;
- 23 (iii) Property Conditions. The County has reasonably determined that the
24 Parcel to be conveyed in such Closing meets the Environmental
25 Conditions standard for such Parcel, as set forth in Article 9(b), as
26 evidenced by a written confirmation thereof signed by the County
27 Administrator (a "Confirmation Notice");
- 28 (iv) Determination of Conveyance. DOE has prepared and duly authorized and
29 executed a Determination of Conveyance for the conveyance of such
30 Parcel;
- 31 (v) Absence of Litigation. No action or proceeding before any court or other
32 Governmental body shall have been filed by any third party or otherwise
33 instituted that restrains or prohibits the transactions contemplated by this
34 Agreement and as of each Closing, there shall be no litigation or
35 administrative agency or other Governmental proceeding, pending or
36 threatened, against DOE or the Property, which after the Closing would
37 materially adversely affect the ability of the County to redevelop the
38 Property for any use;
- 39 (vi) Title Policy. The Title Company shall be committed at the Closing to
40 issue a Title Policy to the County as provided in Article 13, Title
41 Insurance, below;

LAND TRANSFER CONVEYANCE AGREEMENT

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1 (vii) Physical Condition. The physical condition of such Parcel shall permit the
2 County to utilize the Parcel(s) consistent with the land use for that Parcel
3 set forth in Article 6(c) and the value of the land has not been significantly
4 devalued as a result of DOE activity from the value at the time of the
5 execution of this Agreement, reasonable changes resulting from
6 Environmental Remediation, wear and tear, and loss by casualty excepted.
7
8

9 The County's Conditions contained in the foregoing subsections (i) through (vii)
10 are intended solely for the benefit of the County. If any such condition precedent (other
11 than condition (iv) is not satisfied, the County shall have the right in its sole discretion
12 either to waive in writing the condition precedent in question and proceed with the
13 Closing or, in the alternative, postpone the Closing until such conditions have been
14 satisfied. The Closing date may be extended, at the County's sole option, for a reasonable
15 period of time specified by the County, to allow such conditions precedent to be satisfied.

16 DOE shall diligently perform or cause to occur all actions necessary to satisfy all
17 conditions precedent to a Closing that are DOE's obligation to perform or cause to be
18 performed, and shall reasonably cooperate with the County and do all acts as may be
19 reasonably requested by the County with regard to the fulfillment of any of County's
20 Conditions precedent to a Closing.
21

22 2. *DOE's Conditions*. The obligations of DOE to convey any Parcel and related
23 Property and perform the actions that constitute any Closing, including the Initial Closing
24 and all Subsequent Closings, are subject to the satisfaction, on or before the applicable
25 Closing Date, of the following conditions ("DOE's Conditions"):
26

- 27 (i) Conveyance Documents. The County has duly executed and authorized
28 counterpart originals of each of the documents described in subsections (e)
29 for the Initial Closing and (f) for each Subsequent Closing.
30 (ii) County's Performance. The County is not in default in the performance of
31 any material covenant or obligation to be performed by the County under
32 this Agreement and all of the County's representations and warranties
33 contained in or made pursuant to this Agreement shall have been true and
34 correct when made and shall be true and correct as of such Closing Date.
35

36 The conditions precedent contained in the foregoing subsections (i) and (ii) are
37 intended solely for the benefit of DOE. If any condition precedent is not satisfied, DOE
38 shall have the right in its sole discretion either to waive in writing the condition precedent
39 in question and proceed with the conveyance or, in the alternative, postpone the Closing
40 until such conditions have been satisfied. The Closing Date may be extended, at DOE's
41 sole option, for a reasonable period of time specified by DOE, to allow such conditions
42 precedent to be satisfied. The County shall diligently perform or cause to occur all

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1 actions necessary to satisfy all conditions precedent to conveyance that are the County's
2 obligation to perform or cause to be performed, and shall reasonably cooperate with DOE
3 and do all acts as may be reasonably requested by DOE with regard to the fulfillment of
4 any DOE's Conditions to a Closing.
5

6 (b) Pre-Closing DOE Deliveries. DOE shall deliver to the County at the
7 execution of this Agreement the Property Documents defined in Article 12. DOE shall deliver to
8 the County at least thirty (30) days prior to each Closing the Environmental Reports defined in
9 Article 11.

10 (c) DOE Notification to Congress. DOE has notified Congress that it will
11 provide indemnification to the County as permitted by 42 U.S.C. §7274q for all Parcels.
12

13 (d) DOE Initial Closing Deliveries. DOE shall deliver to the Initial Closing
14 the following documents reasonably satisfactory to the County and in a form previously reviewed
15 and approved by the County, and duly authorized and executed:
16

17 1. Quitclaim Deed(s) in substantially the form set forth in Exhibit
18 "C," conveying fee ownership to the County to the Parcel(s) to be conveyed at the Initial
19 Closing pursuant to this Agreement.
20

21 2. Determination of Conveyance(s) for such Parcel(s) to be conveyed
22 at the Initial Closing.
23

24 3. Any permits transferred or assigned relating to each Parcel.
25

26 4. Any easement(s) required by the County relating to such Parcel(s),
27 as set forth in Article 7, substantially in the form set forth in Exhibits "F-1" and "F-2,"
28 attached hereto.
29

30 5. A DOE written determination that the Property to be leased
31 pursuant to the LIFOC is suitable to use for purposes required by the County.
32

33 6. Such additional documents as may be required by New Mexico
34 law, the Title Insurer, or the County.
35

36 7. Certificate confirming that the representations and warranties of
37 DOE set forth in this Agreement are true and correct as of the date of the Closing in
38 substantially the form set forth in Exhibit J-1.
39

40 (e) DOE Subsequent Closing Deliveries. DOE shall deliver to each
41 Subsequent Closing the following documents reasonably satisfactory to the County and in a form
42 previously reviewed and approved by the County, and duly authorized and executed:

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1
2 1. Quitclaim Deed(s) in substantially the form set forth in Exhibit
3 "C," conveying fee ownership to the County to the Parcel(s) to be conveyed at that
4 Closing pursuant to this Agreement.

5
6 2. Determination of Conveyance(s) for such Parcel(s) to be conveyed
7 at that Closing.

8
9 3. Any permits transferred or assigned relating to each Parcel.

10
11 4. Any easement(s) required by the County relating to such Parcel(s),
12 as set forth in Article 7, substantially in the form set forth in Exhibits "F-1" and "F-2"
13 attached hereto.

14
15 5. Any LIFOC, as set forth in Article 4, substantially in the form set
16 forth in Exhibit "B".

17
18 6. Any DOE written determination that the Property to be leased
19 pursuant to the LIFOC is suitable to use for purposes required by the County .

20
21 7. Such additional documents as may be required by New Mexico
22 law, the Title Insurer, or the County.

23
24 8. Certificate confirming that the representations and warranties of
25 DOE set forth in this Agreement are true and correct as of the date of the Closing in
26 substantially the form set forth in Exhibit J-1.

27
28 (f) County Initial Closing Deliveries. The County shall deliver to the Initial
29 Closing the following Closing Documents reasonably satisfactory to DOE and in a form
30 previously reviewed and approved by DOE, and duly authorized and executed:

31
32 1. Acceptance of the Quitclaim Deed(s) in substantially the form set
33 forth in Exhibit "C."

34 2. Acceptance of any easement(s) required by the County relating to
35 such Parcel(s) being conveyed to the County, as set forth in Article 7, substantially in the
36 form set forth in Exhibits "F-1" and "F-2," attached hereto.

37
38 3. Such additional documents as may be required by New Mexico
39 Law, the Title Insurer, or DOE.
40

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1 4. Certificate confirming that the representations and warranties of
2 the County set forth in this Agreement are true and correct as of the date of the Closing in
3 substantially the form set forth in Exhibit J-2.
4

5 (g) County Subsequent Closing Deliveries. The County shall deliver to each
6 Subsequent Closing the following Closing Documents reasonably satisfactory to DOE and in a
7 form previously reviewed and approved by DOE, and duly authorized and executed:
8

9 1. Acceptance of the Quitclaim Deed(s) in substantially the form set
10 forth in Exhibit "C."
11

12 2. Any easement(s) required by the County relating to such Parcel(s)
13 being conveyed to the County, as set forth in Article 7, substantially in the form set forth
14 in Exhibits "F-1" and "F-2" attached hereto.
15

16 3. Any LIFOC, as needed, as set forth in Article 4 in the form set
17 forth in Exhibit "B".
18

19 4. Such additional documents as may be required by New Mexico
20 law, the Title Insurer, or DOE.
21

22 5. Certificate confirming that the representations and warranties of
23 the County set forth in this Agreement are true and correct as of the date of the Closing in
24 substantially the form set forth in Exhibit J-2.
25

26 **ARTICLE 9. Funding By DOE.** DOE agrees to budget for and seek funding through
27 the federal budget process for the required remediation of the contamination of each Parcel
28 described above and to meet DOE's other obligations under this Agreement.
29

30 **ARTICLE 10. Environmental Reports and Environmental Insurance.**
31

32 (a) To the best of DOE's knowledge and belief, a complete list of
33 environmental reports prepared by or for DOE with respect to the Property, including the lead-
34 based paint and asbestos surveys relating to the improvements on the Property ("Environmental
35 Reports") are attached hereto as Exhibit "G." The Environmental Reports reflect a systematic
36 process in which available information in the possession or control of DOE was analyzed and
37 conclusions drawn about the environmental condition of the property. Further, the Environmental
38 Reports have been prepared, under the direction of DOE, in accordance with all material
39 requirements of all applicable directives, guidance documents, and other policies, and are based
40 on the administrative record created to provide for the conveyance of the Property subject to a
41 Determination of Conveyance.
42

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1 (b) To the best of DOE's knowledge and belief, the information contained in
2 the Environmental Reports is accurate and complete. DOE agrees to promptly provide the County
3 with copies of any and all documents, information, and amendments to previously supplied
4 Environmental Reports with respect to the environmental condition of the Property prepared by or
5 for DOE after the date of this Agreement.

6
7 (c) DOE shall provide an updated and certified (to the best of DOE's
8 knowledge and belief) list of Environmental Reports to the County at least thirty (30) days prior to
9 each Closing.

10
11 (d) DOE shall inform the County, on a monthly basis, of DOE's progress in
12 completing the environmental and cultural and historical remediation of each Parcel.

13
14 (e) The County and its transferees, agents, successors and assigns, at their
15 own expense, shall have the right to inspect, review and copy such Environmental Reports within
16 five (5) business days of notice to DOE.

17
18 (f) DOE recognizes that the County may purchase environmental liability
19 insurance at its own cost and expense. DOE will cooperate with the County or its authorized
20 agent, and will permit examination and inspection of any documents relating to the
21 environmental contamination or remediation of the Property and will permit access by the
22 County or its authorized agent to the Property during normal business hours for inspection of the
23 Property.

24
25 **ARTICLE 11. Delivery of Property Documents.**

26
27 (a) DOE shall furnish to the County, upon the execution of this Agreement a
28 list of known surveys, soils and geological reports, reports, studies, assessments, test results,
29 leases, licenses, easements, permits, contracts and other documents relating to the ownership,
30 property interests or physical or structural composition of the Property including buildings and
31 other improvements and any and all other documents of material significance to the ownership,
32 use, management or operation of the Property (the "Property Documents"). DOE shall furnish to
33 the County any other documents available to DOE that the County may reasonably request
34 relating to the Property. The County and its transferees, agents, successors and assigns, at their
35 own expense, shall have the right to inspect, review and copy such Property Documents within
36 five (5) business days of notice to DOE.

37
38 (b) DOE shall cooperate with the County in providing information about title,
39 physical condition and other matters relating to the ownership, maintenance, operation and use of
40 the Property.

41

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1 (c) DOE shall provide an updated and certified (to the best of DOE's
2 knowledge and belief) list of Property Documents, if any, to the County at least thirty (30) days
3 prior to each Closing.
4

5 **ARTICLE 12. DOE's Representations.** DOE hereby represents to the County on and
6 as of the Effective Date of this Agreement and as of the date of each Closing as follows:
7

8 (a) Execution of Agreement. DOE has full capacity, right, power and
9 authority to execute, deliver and perform this Agreement and all documents to be executed by
10 DOE pursuant hereto, and all required action and approvals therefor have been duly taken and
11 obtained. This Agreement and all documents to be executed pursuant hereto by DOE are and
12 shall be binding upon and enforceable against DOE in accordance with their respective terms.
13

14 (b) Complete Information. To the best of DOE's knowledge, information and
15 belief, the information included in this Agreement, and the Exhibits hereto and the documents to
16 be delivered to the County pursuant to this Agreement, including the Environmental Reports and
17 the Property Documents, or previously delivered to the County are true, correct and complete in
18 all material respects, and the same do not omit any material information required to make the
19 submission thereof fair and complete.
20

21 (c) Possession. To the best of DOE's knowledge, information and belief, the
22 information included in this Agreement, and the Exhibits hereto and the documents to be
23 delivered to the County pursuant to this Agreement or previously delivered to the County set
24 forth and disclose all contracts, leases or licenses in existence or persons who have possessory
25 rights or any claims in respect to the Property that will survive Closing, if any.
26

27 (d) Claims. To the best of DOE's knowledge, information and belief, there
28 are no claims, causes of action or other litigation or proceedings pending or threatened with
29 respect to the ownership or operation of the Property or any part thereof (including without
30 limitation disputes with mortgagees, governmental authorities, utilities, contractors or adjoining
31 land owners) except as set forth on Exhibit "L," attached hereto and made a part hereof.
32

33 (e) Notice. To the best of DOE's knowledge, information and belief, DOE has
34 not received any notice of (and is not otherwise aware of) any violations of any legal
35 requirements with respect to the Property that has not been disclosed to the County except as set
36 forth on Exhibit "M," attached hereto and made a part hereof.
37

38 (f) No Commitments. Except as previously disclosed in writing, DOE has
39 made no oral or written commitments or representations to, or understandings or agreements with
40 any other entity or governmental authority, including other federal agencies, which would in any
41 way be binding on the County or would interfere with the County's unrestricted use of the

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1 Property. DOE will not make or enter into any such commitments, representations,
2 understandings or agreements, that affects the Parcels without the County's prior written consent.
3

4 **ARTICLE 13. County Representations.** The County hereby represents to DOE on and
5 as of the Effective Date and on and as of the Closing, the County has full capacity, right, power
6 and authority to execute, deliver and perform this Agreement and all documents to be executed
7 by the County pursuant hereto, and all required action and approvals therefor have been duly
8 taken and obtained. The individuals signing this Agreement and all other documents executed or
9 to be executed pursuant hereto on behalf of the County shall be duly authorized to sign the same
10 on the County's behalf and to bind the County thereto. This Agreement and all documents to be
11 executed pursuant hereto by the County are and shall be binding upon and enforceable against the
12 County in accordance with their respective terms.
13

14 **ARTICLE 14. Title.**
15

16 (a) Title to the Property shall be free from all exceptions except for the Permitted
17 Title Exceptions described on Exhibit "I," attached hereto. Any title insurance, which may be
18 desired by the County, will be procured at its sole cost and expense. DOE will, however,
19 cooperate with the County or its authorized agent, and will permit examination and inspection of
20 any documents relating to the title of the Property as it may have available.
21

22 (b) The County may, at its sole cost and expense, on or before each Closing order
23 such searches as it deems appropriate confirming the absence of title exceptions other than the
24 Permitted Title Exceptions ("Additional Title Exceptions"). If such searches disclose Additional
25 Title Exceptions, DOE shall have thirty (30) days or such longer terms as the parties mutually
26 agree from the date of notice of objection to the Additional Title Exceptions from the County to
27 have the Additional Title Exceptions removed, released or insured over and provide evidence
28 thereof to the County. The County shall have the right to approve DOE's removal or insuring
29 against any exceptions, or, alternatively, the right to rescind this transaction without penalty.
30

31 **ARTICLE 15. Environmental Provisions**
32

33 (a) DOE and the County hereby agree to be bound by the following terms and
34 conditions of the Quitclaim Deeds substantially as set forth in Exhibit "C" and Easements as set
35 forth in Exhibits "F-1" and "F-2" for the conveyance of Parcels pursuant to a Determination of
36 Conveyance (For purposes of this Article, the term "GRANTOR" shall mean DOE, and the term
37 "GRANTEE" shall mean the County, or its successors or assigns):
38

39 **"NOTICE OF HAZARDOUS SUBSTANCE ACTIVITY"**

40 *"The information contained in this notice is required under the authority of regulations*
41 *promulgated under Section 120(h) of the Comprehensive Environmental Response,*

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1 *Compensation and Liability Act (CERCLA or "Superfund"), 42 U.S.C. Section 9620(h)."*
2

3 **[APPROPRIATE CERCLA Compliance LANGUAGE TO BE ADDED - if any]**

4 "GRANTOR covenants that all remedial action necessary to protect human health and the
5 environment with respect to any known hazardous substance remaining on the Property has been
6 taken, or is in place and operating to the satisfaction of the State and Federal regulatory agencies,
7 before the date of transfer.
8

9 GRANTOR covenants that any additional remedial action found to be necessary after
10 such date of transfer shall be performed by the United States.
11

12 GRANTEE covenants that the GRANTOR, its officers, agents, employees, contractors
13 and subcontractors, in accordance with section 120(h) of the Comprehensive Environmental
14 Response, Compensation and Liability Act, as amended, shall have access to the Property in any
15 case in which remedial action or corrective action is found to be necessary after the date of the
16 conveyance of the Property.
17

18 The GRANTOR and the GRANTEE agree to cooperate in good faith to minimize any
19 conflict between necessary environmental investigation and remediation activities and
20 GRANTEE's operations. Any inspection, survey, investigation, or other response or remedial
21 action will, to the extent practicable, be coordinated with representatives designated by
22 GRANTEE.
23

24 The GRANTOR indemnifies and holds harmless the GRANTEE or its successor against
25 any claim for injury to a person or property that results from the release or threatened release of a
26 hazardous substance or pollutant or contaminant as a result of Department of Energy activities on
27 the Property transferred under this Deed, consistent with the provisions of section 3158 of the
28 National Defense Authorization Act of 1998 (Pub. L. No. 105-85), 42 U.S.C. §7274q."
29

30 **ARTICLE 16. Environmental Deed Covenants.** The Parties agree that the County, or
31 its successors or assigns, may seek approval of a procedure through DOE or the State of New
32 Mexico for removal of environmental deed covenants from the applicable Quitclaim Deeds,
33 excluding the CERCLA §9620(h) covenants set forth in Article 15, once the environmental
34 contamination on the Parcel no longer poses a threat to human health and the environment, in
35 compliance with federal and State of New Mexico standards. DOE agrees to cooperate with such
36 procedure, and sign all amended Quitclaim Deeds as necessary. DOE shall include in each
37 quitclaim deed a provision that permits the removal of environmental deed covenants consistent
38 with the provisions of this Article.
39

40 **ARTICLE 17. Officials Not To Benefit.** No member of or delegate to Congress shall
41 be admitted to any share or part of the Agreement or to any benefit to arise therefrom, but this

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1 provision shall not be construed to extend to this Agreement if made with a corporation for its
2 general benefit.

3
4 **ARTICLE 18. Covenant Against Contingent Fees.** The County warrants that no
5 person or agency has been employed or retained to solicit or secure this Agreement upon an
6 agreement or understanding for a commission, percentage, brokerage, or contingent fee,
7 excepting bona fide employees or bona fide established commercial agencies maintained by the
8 County for the purpose of securing the successful purchase of the Property by the County. "Bona
9 fide established commercial agencies" has been construed to include licensed real estate brokers
10 engaged in the business generally. For breach or violation of the warranty, DOE has the right to
11 annul this Agreement without liability or in its discretion to require the County to pay, in addition
12 to the consideration, the full amount of such commission, percentage, brokerage, or contingent
13 fee.

14
15 **ARTICLE 19. Notices.** All notices and communications to any party hereunder shall be
16 in writing and shall be deemed properly given if delivered personally or sent by registered or
17 certified mail, postage prepaid, or by Federal Express or similar generally recognized overnight
18 carrier regularly providing proof of delivery to the following addresses or at such other address or
19 to such other persons as such party may specify from time to time by written notice to the other
20 party:

21 To DOE:

22 U.S. Department of Energy
23 Office of Los Alamos Site Operations
24 Director
25 528 35th Street
26 Los Alamos, New Mexico 87544

27 To the County:

28 Incorporated County of Los Alamos
29 Attn: County Administrator
30 Room 250
31 P.O. Box 30
32 Los Alamos, NM 87544

33
34 With a copy to:

35 Kutak Rock LLP
36 Attn: Seth D. Kirshenberg
37 1101 Connecticut Avenue, NW, 10th Floor
38 Washington, DC 20036
39
40
41

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1 **ARTICLE 20. Prior Liabilities.**

2
3 (a) DOE shall remain responsible for all liabilities, claims, demands,
4 judgments, suits, litigation, amounts payable (collectively, "Pre-Closing Obligations") against
5 DOE or the Property attributable to the period prior to the conveyance or lease of the Property to
6 the County, or as otherwise provided by the law. The County shall notify DOE of the existence
7 or occurrence of any such Pre-Closing Obligations of which it has knowledge and shall cooperate
8 with DOE in the disposition thereof.
9

10 (b) DOE agrees to that it shall be responsible for and hold harmless the
11 County, its successors, transferees, assigns, employees and agents for activities conducted on the
12 Property by DOE, its agents, employees or contractors under this Agreement.

13 **ARTICLE 21. Right to Assign.** In accordance with 42 U.S.C. §2391 note, the County
14 may, at its option, transfer or assign any of its rights and interests to a Parcel under this
15 Agreement to the New Mexico State Highways and Transportation Department ("NMSH&TD"),
16 the Los Alamos Housing Partnership, the Los Alamos Commerce and Development Corporation,
17 or another organization designated and approved by the County. If the County assigns any of its
18 rights or interests to a Parcel, the assignee shall be bound by the terms and conditions of this
19 Agreement and any restrictions placed on the Parcel by DOE.
20

21 **ARTICLE 22. Finality of Conveyance.**

22 (a) Effect of Deeds. The delivery of the executed Deeds pursuant to this
23 Agreement from DOE to the County shall be deemed full performance by DOE of its obligations
24 hereunder with regard to those Parcels conveyed by each Deed other than any obligations of DOE
25 which are required by this Agreement or by law (including without limitation any obligations
26 under CERCLA Section 120(h) and Section 330 of the Department of Defense Authorization Act
27 of 1993) to be performed after the delivery of each such Deeds). As set forth in Article 7, the
28 County reserves the right to review and approve the title as conveyed by each Deed.

29 (b) Possession. Upon any Closing, DOE shall immediately deliver to the
30 Agency possession of the Property conveyed in such Closing in the condition required by this
31 Agreement.
32

33 (c) No Right of Rescission. There shall be no right of rescission in DOE as to the
34 Property, or any portion thereof, once conveyed to the County. The foregoing shall not be
35 interpreted to limit any future exercise of the power of eminent domain by DOE.

36 **ARTICLE 23: As Is Where Is.** All of the Property conveyed or leased hereunder will
37 be "as is" and without any representation or warranty whatsoever and without any obligation on
38 the part of the United States of America except as expressly provided for by law or in this
39 Agreement.

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1 **ARTICLE 24. DOE's Covenants.** From the Effective Date of this Agreement to the
2 Closing, DOE shall not do, permit, or agree to do, any of the following: sell, encumber or grant
3 any interest in the Property or any part thereof that will survive beyond the Closing for a Parcel in
4 any form or manner whatsoever or otherwise perform or permit any act which will diminish or
5 otherwise affect the County's interest under this Agreement or in or to the Property or which will
6 prevent DOE's full performance of its obligations hereunder, without the prior written consent of
7 the County.

8
9 **ARTICLE 25. Liability for Environmental Contamination.**

10
11 (a) Notwithstanding any other provision of this Agreement, and except as set forth in
12 the Quitclaim Deed described herein, the County and its assigns do not hereby assume any
13 liability or responsibility for environmental impacts and damage caused during DOE's ownership
14 of the Property or by DOE's use of hazardous materials on any portion of the Property. The
15 County and its assigns have no obligation under this Agreement to undertake the defense of any
16 claim or action, whether in existence now or brought in the future, or to conduct any cleanup or
17 remediation action solely arising out of the use or release of any hazardous materials, on or from
18 any part of the Property due to activity on the Property by DOE or during DOE's ownership of
19 the Property.

20
21 (b) DOE agrees to indemnify the County for any claim for injury to a person or
22 property that results from the release or threatened release of hazardous materials as a result of
23 DOE activities on the Property pursuant to DOE's authority under 42 U.S.C. §7274q(a)(1).

24
25 **ARTICLE 26. Short Form Notice.** Upon execution of this Agreement, the County and
26 DOE shall execute the Short Form Notice of Agreement attached hereto as Exhibit "H". The
27 Short Form Notice of Agreement shall be recorded in the official records of the County
28 immediately following the execution of this Agreement.

29
30 **ARTICLE 27. Modification; Waivers.** This Agreement contains the entire agreement
31 and understanding of the parties in respect to the purchase and sale of the Property, and may not
32 be amended, modified or discharged nor may any of its terms be waived except by an instrument
33 in writing signed by the Parties. A waiver by a Party of a specific provision shall not be deemed
34 a waiver of any subsequent provision. The Parties hereto shall not be bound by any terms,
35 conditions, statements, warranties or representations, oral or written, not contained herein.

36
37 **ARTICLE 28. Further Assurances.** The Parties acknowledge that it is their mutual
38 intent to effectuate an orderly, amicable, and expeditious transfer of the Property from DOE to
39 the County and that, toward that end, (i) any or all ambiguities herein shall, to the extent
40 practicable, be construed in the way most liberally conducive to the aforesaid conveyance, (ii) the
41 Parties both agree to take such additional acts and/or to permit such additional actions (including
42 but not limited to any actions required in the event it shall become necessary, before or after the

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1 conveyances contemplated herein, to effect a formal subdivision or subdivisions of the Property)
2 and (iii) the Parties agree to execute, deliver and perform under the terms of such other
3 documents as their respective legal counsel may deem necessary or appropriate to effect the
4 purposes of this Agreement.

5 6 **ARTICLE 29. Dispute Resolution Procedures.**

7
8 (a) If a dispute arises under this Agreement, the following procedures shall apply:

9 (1) Either Party may invoke this dispute resolution procedure, (2) The Parties shall make
10 reasonable efforts to informally resolve disputes at the lowest level prior to the issuance of a
11 formal written statement of dispute under the procedures set forth below, and (3) Both Parties
12 shall abide by the terms and conditions of any final resolution of the dispute.

13
14 (b) Within thirty (30) days after any action which leads to or generates a dispute
15 or after efforts to informally resolve a dispute have failed, either Party may submit a written
16 statement of dispute to the other Party setting forth the nature of the dispute, the work affected by
17 the dispute, the disputing Party's technical and legal position regarding the dispute, and the relief
18 requested. DOE Representative and the County Representative, shall serve as Dispute
19 Resolution Managers for their respective Party. The written statement of dispute shall be mailed
20 by the Dispute Resolution Manager for the disputing Party to the Dispute Resolution Manager for
21 the other Party.

22
23 (c) The Dispute Resolution Managers shall have twenty-one (21) working days to
24 resolve the dispute from the date of receipt of the written statement of dispute. The resolution of
25 the dispute shall be memorialized in writing.

26
27 (d) The Parties shall diligently perform under this Agreement pending the
28 completion of these dispute resolution procedures.

29
30 (e) If the Dispute Resolution Managers are unable to resolve the dispute within
31 twenty-one working days of receipt of the written statement of dispute, the Parties may pursue
32 whatever remedies they may have at law or equity.

33
34 (f) The timeframes set forth above for reporting and resolution of disputes may be
35 extended by mutual agreement of the Parties and such agreement shall be memorialized in
36 writing.

37
38 **ARTICLE 30. Survival and Benefit.** All representations, warranties, agreements,
39 obligations and indemnities of the Parties shall, notwithstanding any investigation made by any
40 party hereto, survive Closing and the same shall inure to the benefit of and be binding upon the
41 respective successors and assigns of the Parties. Nothing in this Agreement otherwise shall be
42 construed as creating any rights of enforcement by any person or entity that is not a party hereto,

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1 nor any rights, interest, or third party beneficiary status for any entity or person other than the
2 Parties hereto.

3
4 **ARTICLE 31. DOE Consent To Subdivision Of Property/Dedication Of Roads:**
5 DOE, as permitted by Federal statute, shall not unreasonably delay or withhold its consent to the
6 recording by the County, of all documents necessary to subdivide all or portions of the Property,
7 approve assessments, enact rezoning, adopt redevelopment project areas, dedicate public roads,
8 easements, and open spaces, and record covenants, conditions and restrictions regarding the
9 future development and use of the Property, or the recording of any subdivision plat, dedication
10 plat, or declaration of covenants, conditions and restrictions concerning the Property. DOE
11 agrees that it will not unreasonably interfere with or protest or challenge any subdivision petition
12 or application over the Property. Additionally, DOE acknowledges the County's role in the
13 development of the Property and, as permitted by Federal statute, authorizes the County to vote
14 in any election on the Property or otherwise indicate its views in such matters as the owner or
15 contract purchaser of the Property, as the County deems appropriate.

16
17 **ARTICLE 32. Interpretation.** The headings and captions herein are inserted for
18 convenient reference only and the same shall not limit or construe the paragraphs or sections to
19 which they apply or otherwise affect the interpretation hereof.

20
21 (a) The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any
22 similar terms shall refer to this Agreement, and the term "hereafter" shall mean after, and the
23 term "heretofore" shall mean before, the date of this Agreement.

24
25 (b) Words of the masculine, feminine or neuter gender shall mean and include
26 the correlative words of other genders, and words importing the singular number shall mean and
27 include the plural number and vice versa.

28
29 (c) Words importing persons shall include firms, associations, partnerships
30 (including limited partnerships), trusts, corporations and other legal entities, including public
31 bodies, as well as natural persons.

32
33 (d) The terms "include," "including" and similar terms shall be construed as if
34 followed by the phrase "without being limited to."

35
36 (e) This Agreement shall be given effect and construed by application of the
37 law of New Mexico; provided that if any such action or proceeding arises under the Constitution,
38 laws or treaties of the United States of America, or if there is diversity of citizenship between the
39 parties hereto, so that it is to be brought in the U.S. District Court, it shall be brought in the
40 District Court for the District of New Mexico.

41

LAND TRANSFER CONVEYANCE AGREEMENT

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1 (f) Whenever under the terms of this Agreement the time for performance of a
2 covenant or condition falls upon a Saturday, Sunday or holiday observed by the performing party,
3 such time for performance shall be extended to the next business day. Otherwise all references
4 herein to "days" shall mean calendar days.
5

6 (g) If any term or provision of this Agreement or the application thereof to any
7 person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this
8 Agreement, or the application of such term or provision to persons or circumstances other than
9 those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such
10 term and provision of this Agreement shall be valid and be enforced to the fullest extent
11 permitted by law.
12

13 **ARTICLE 33. Non-Discrimination.** The County covenants for itself, its successors
14 and assigns and every successor in interest to the Property hereby conveyed, or any part thereof,
15 that the said the County and such successors and assigns shall not discriminate upon the basis of
16 race, color, sex, religion, or national origin in the use, occupancy, sale or lease of the Property, or
17 in their employment practices conducted thereon. This covenant shall not apply, however, to the
18 lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to
19 premises used primarily for religious purposes. The United States of America shall be deemed a
20 beneficiary of this covenant without regard to whether it remains the owner of any land or
21 interest therein in the locality of the Property hereby conveyed and shall have the sole right to
22 enforce this covenant in any court of competent jurisdiction.
23

24 **ARTICLE 34. Time is of the Essence.** Time is of the essence in this Agreement.
25

26 **ARTICLE 35. Counterparts.** This Agreement may be executed in multiple
27 counterparts and/or with the signatures of the Parties set forth on different signature sheets and
28 all such counterparts, when taken together, shall be deemed one original.
29

30 **ARTICLE 36. Anti-Deficiency Act.** DOE's obligations under this Agreement are
31 subject to the availability of appropriated funds pursuant to the Anti-Deficiency Act, 31 U.S.C.
32 §1341.
33

34 **ARTICLE 37. Applicability of Indemnity.** To the extent, if at all, Section 56-7-1
35 NMSA 1978 is applicable to this Agreement, no indemnification shall extend to liability, claims,
36 damages, losses or expenses, including attorney fees, arising out of (i) the preparation or
37 approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications
38 by the indemnitee, or the agents or employees of the indemnitee; or (ii) the giving of or failure to
39 give directions or instructions by the indemnitee, or the agents or employees of the indemnitee,
40 where such giving or failure to give directions or instructions is the primary cause of bodily
41 injury to persons or damage to property.
42

43 **[SIGNATURE PAGE FOLLOWS]**

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IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals as of the date first above written.

INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO

By: Geoff Rodgers
GEOFF RODGERS, COUNCIL CHAIR

ATTEST: Nita K Taylor
County Clerk

DATE: 9-23-02

STATE OF NEW MEXICO)
LOS ALAMOS COUNTY)

ACKNOWLEDGEMENT

The foregoing instrument was acknowledged before me the 23rd day of September, 2002 by Geoff Rodgers, to me personally known, who being by me duly sworn, did say that he is the Council Chair of the Incorporated County of Los Alamos, New Mexico, and that this instrument was signed by him with proper authority on behalf of the Incorporated County of Los Alamos, New Mexico and said Geoff Rodgers acknowledged this instrument to be the act of said Incorporated County of Los Alamos, New Mexico.

Paucina M. Martinez
Notary Public

My Commission expires: 11-17-03

UNITED STATES OF AMERICA
Acting by and through the
U.S. Department of Energy

By: Dennis Martinez
DENNIS MARTINEZ
DEPUTY DIRECTOR, OFFICE OF LOS
ALAMOS SITE OPERATIONS

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STATE OF NEW MEXICO)
LOS ALAMOS COUNTY)

ACKNOWLEDGEMENT

On this 23rd day of September, 2002, before me appeared E. Dennis Martinez, to me personally known, who being by me duly sworn, did say that he is the Deputy Director, Office of Los Alamos Site Operations, United States Department of Energy, and that this instrument was signed by him with proper authority on behalf of the United States of America and said Department of Energy, and said E. Dennis Martinez acknowledged this instrument to be the act of said United States.



Notary Public

My Commission expires: 11/25/06