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**MEMORANDUM OF AGREEMENT
BETWEEN THE NEW MEXICO ENVIRONMENT DEPARTMENT
AND THE
US DEPARTMENT OF ENERGY
FOR
FUNDING TO CONDUCT REGULATORY ACTIVITIES AT
LOS ALAMOS NATIONAL LABORATORY**

This memorandum of Agreement (MOA) is made and entered into between the New Mexico Environment Department (NMED) and the US Department of Energy (DOE). DOE oversees the operation of the Los Alamos National Laboratory (LANL). The purpose of this MOA is to establish a general working agreement between the parties to provide funding necessary for the NMED to implement and carry out its regulatory duties under the New Mexico Hazardous Waste Act (HWA) and the Compliance Order on Consent, dated March 1, 2005 (Consent Order).

RECITALS

Whereas, NMED has the responsibility under the New Mexico Hazardous Waste Act (§§74-4-1 *et seq.* NMSA 1978) to review, process and take timely action upon the hazardous waste permit for DOE, including but not limited to, its hazardous waste permit applications, permit modification requests, closure and post closure activities and other permit actions and documents submitted by DOE to NMED for review and action.

Whereas, NMED has responsibilities under the Consent Order, including but not limited to, timely review of deliverables and documents including Investigation Reports and Work Plans, Risk Assessment Reports, Corrective Measures Evaluation Report, Interim Measures Reports, Remedy Completion Reports and other reports and documents required by the Order;

Whereas, NMED and DOE recognize that adequate funding is necessary to enable NMED to implement and carry out its regulatory duties to review and act upon permit activities and requirements under the Consent Order in a timely and efficient manner;

Whereas, NMED and DOE believe that a formal memorandum will provide the structure and basis for the provision of funding necessary for NMED to carry out its duties and responsibilities in accordance with schedules as outlined in permits and orders;

NOW, THEREFORE, in consideration of the recitals and the mutual obligations of the parties as herein expressed NMED and DOE state as follows:

A. AUTHORITIES

NMED is the department within the executive branch of the New Mexico State Government charged with administration and enforcement of the HWA, NMSA 1978, §§ 74-1-1 *et seq.*, and the Hazardous Waste Regulations, 20.4.1 NMAC. This MOA will aid NMED in implementing and carrying out its duties under the HWA and the Consent Order with respect to LANL, and is consistent with NMSA 1978, §§ 74-1-6.C and H of the Environmental Improvement Act and NMSA 1978, §§ 74-4-4.2 and 74-4-10 of the HWA.



B. PURPOSE

The parties recognize that LANL is a complex and unique facility that will benefit from providing NMED funding to enable the agency to increase staff, contract support and other resources necessary to perform its regulatory duties specified herein in a timely and efficient manner. NMED has allocated staff to perform work under this MOA based upon a good faith estimate.

C. RESPONSIBILITIES OF THE PARTIES

1. DOE will provide funding to support NMED's timely regulatory services. These funds will be used to pay fees assessed under the fee schedules outlined in 20.4.2 NMAC or for the actual cost of delivering such services, whichever is greater, to support the following activities:
 - a. *Permit Activities.* NMED review and processing of DOE permit requests for LANL includes, but is not limited to, its hazardous waste permit application, preparation of a draft permit and administrative record; permit modification requests; closure and post-closure activities and other permit actions and documents submitted by DOE or its contractors to NMED.
 - b. *Consent Order.* NMED review of documents and deliverables necessary to ensure that the corrective action requirements under the Consent Order are met, including, but not limited to, Investigation Reports and Work Plans, Risk Assessment Reports, Corrective Measures, Evaluation Reports, Interim Measure Reports, Remedy Completion Reports and other reports and documents required by the Order
 - c. *Federal Facility Compliance Order (10/04/1995).* NMED review of the annual Site Treatment Plan update and other documents supporting the Consent Order.
 - d. *Other.* NMED's use of funds provided herein for any other activity is not authorized except by the express written consent of DOE.
2. NMED shall submit invoices to DOE for services and expenditures pursuant to 20.4.2 NMAC; these invoices shall be marked "PAID."
3. NMED shall maintain an auditable accounting system to ensure that funds provided by DOE are used to perform services specified under this MOA. The accounting system shall also itemize all operating costs necessary to implement this MOA, including, but not limited to, the purchase of equipment, property and other necessary expenditures. Equipment and property purchased with funds provided pursuant to this MOA shall be limited to that reasonably necessary to carry out the activities specified in this MOA. DOE shall review and approve in advance all equipment and property requested by NMED to be purchase using funds: DOE approval shall be within two weeks of a request by NMED. NMED shall ensure that all services and expenditures under this MOA are accounted for on a facility-specific basis. NMED shall prepare an end of the year reconciliation and accounting report that adheres to the State of New Mexico's financial management requirements.

4. DOE shall have access to all documents used to prepare the end of the NMED fiscal year (ending June 30) reconciliation and accounting report that will be provided to DOE after the beginning of the Federal fiscal year, including NMED's database reports used by staff to track time spent on LANL tasks. DOE may request accounting reports of monies spent to date at any time, and NMED will provide the requested information in a timely fashion. Nothing in this MOA shall be construed to conflict with the requirements of the New Mexico Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 *et seq.*
5. NMED shall ensure that any unexpended balance from funds paid for by DOE under this MOA, including any fees paid under 20.4.2 NMAC, is credited for the next fiscal year or refunded upon request by DOE.
6. NMED and DOE shall meet as needed to review progress on regulatory matters and performance commitments addressed under this MOA and to update schedules for meeting their objectives. Nothing in this provision shall prevent the parties from meeting at any other time to discuss regulatory progress or other matters in this MOA.
7. NMED shall make every effort to submit future supplemental budget requests by the end of the May proceeding the next state fiscal year.

D. LIMITATIONS

1. In addition to any limitations that may be described in Section A. (Authorities), the following limitations apply to this MOA:
 - a. This MOA in no way restricts either party from participating in any activity with other public or private agencies, organizations, or individuals.
 - b. This MOA is neither a fiscal nor a funds obligation document. Funds obligation documents will be executed individually with specific, incremental amounts pursuant to funding made available to DOE. Nothing in this MOA authorizes or is intended to obligate the parties to expend, exchange, or reimburse funds, services, or supplies, or transfer or receive anything of value.
 - c. This MOA is strictly for internal management purposes for each of the parties. It is not legally enforceable and shall not be construed to create any legal obligation on the part of either party. This MOU shall not be construed to provide a private right or cause of action for or by any person or entity with other public or private agencies, organizations, or individuals.
 - d. The Parties recognize that any information or data provided to the United States or to New Mexico under this MOA will be subject to the requirements of applicable federal and state disclosure laws. Decisions on disclosure of information to the public pursuant to requests to DOE under the Freedom of Information Act (5 USC 552) regarding projects and programs referenced in this MOA shall be made by DOE following consultation with NMED. All commitments made in this MOA are subject to the availability of appropriated funds and shall not be interpreted as, or constitute, a commitment or

requirement that the United States obligate or pay funds in contravention of the Anti-Deficiency Action, 31 U.S.C § 1341.E.

E. EQUIPMENT, PROPERTY AND DOCUMENTS

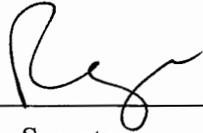
Equipment or property purchased or acquired by NMED with funds provided pursuant to this MOA shall be the property of NMED. Documents provided under Section C.4 of this MOA shall remain the property of NMED.

F. DURATION OF AGREEMENT, MODIFICATION OR TERMINATED

The MOA for Funding will be effective when signed by both parties, and may be amended at any time by the mutual written consent of the parties. It shall continue in effect for five (5) years from the date of its execution. This MOU may be terminated by mutual written agreement of the parties, or by either party upon 90 days written notice to the other party. The parties will review the MOA at least annually to determine whether it should be revised, renewed or terminated. Any terms of the MOA found to be inconsistent with current DOE or NMED directives or policies will be invalid, but the remaining terms will remain in effect.

G. SIGNATURES ON FOLLOWING PAGE

Signed:



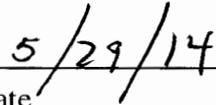
Ryan Flynn, Secretary
New Mexico Environment Department



Date



Kimberly Davis Lebak
Manager
Los Alamos Field Office
US Department of Energy



Date