

**Memorandum of Agreement**  
**Between the New Mexico Environment Department**  
**and**  
**the United States Department of the Air Force**  
**for**  
**Funding to Conduct Regulatory Activities at**  
**Kirtland Air Force Base Bulk Fuel Facility**  
**Solid Waste Management Units ST-106 and SS-111**

This Memorandum of Agreement (“MOA”) is made and entered into between the New Mexico Environment Department (“NMED”) and the United States Department of the Air Force (“USAF”). USAF oversees the operation of Kirtland Air Force Base (“KAFB”). The purpose of this MOA is to expedite work on the KAFB Bulk Fuels Facility (“BFF”) corrective action project.

**RECITALS:**

**Whereas**, NMED has the responsibility under the New Mexico Hazardous Waste Act (“HWA”) (NMSA 1978, §§ 74-4-1 to -14) to review, process and take timely action upon the KAFB Hazardous Waste Facility Permit, including but not limited to, all corrective action activities related to the BFF conducted by NMED;

**Whereas**, NMED has responsibilities under the Hazardous Waste Permit and Corrective Action Fee Regulations, 20.4.2 NMAC, including but not limited to, review of deliverables and documents including Investigation Reports and Work Plans, Risk Assessment Reports, Corrective Measures Evaluation Reports, Interim Measures Reports, Remedy Completion Reports and other reports and documents required by the KAFB Hazardous Waste Facility Permit;

**Whereas**, USAF has responsibility under 10 U.S.C. § 2701 to carry out a program of environmental restoration at facilities under the jurisdiction of USAF, including KAFB, known as the Defense Environmental Restoration Program (“DERP”);

**Whereas**, NMED and USAF recognize that adequate funding is necessary to enable NMED to implement and carry out its regulatory duties to review, discuss and act upon corrective action activities and requirements under the KAFB Hazardous Waste Facility Permit in an expedited manner, which will assist USAF in carrying out its responsibilities under the DERP;

Whereas, Section 74-4-4.2(K) of the HWA provides that “[t]he department [NMED] and a business generating hazardous waste, conducting permitted hazardous waste management activities or seeking a permit for the management of hazardous waste may enter into a voluntary fee agreement in addition to and that includes all of the fees required by Subsection J of this section.”

**NOW, THEREFORE**, in consideration of the recitals and the mutual obligations of the parties as herein expressed, NMED and USAF 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, 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 KAFB Hazardous Waste Facility Permit with respect to KAFB, and is consistent with NMSA 1978, § 74-1-6(C) of the Environmental Improvement Act and NMSA 1978, §§ 74-4-4.2 and 74-4-10 of the HWA.

USAF is a department within the Department of Defense and is authorized to implement the DERP at KAFB.

**B. PURPOSE**

The parties recognize that the KAFB BFF project is a complex and unique project. Funding under this MOA will supplement fees set forth in the Hazardous Waste Permit and Corrective Action Fee Regulations, will enable NMED to move forward expeditiously on its oversight of the BFF project and therefore further USAF’s ability to carry out its responsibilities under the DERP. This MOA covers the reimbursement of NMED expenditures associated with providing expedited services for DERP activities funded by the Defense Environmental Restoration Account.

**C. SERVICES**

USAF agrees to seek sufficient funding authority to pay for expediting the following NMED activities related to the BFF project:

1. Technical Review. Review of documents and submittals necessary to ensure that the corrective action requirements under the KAFB Hazardous Waste Facility Permit 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, permit modifications and other reports and documents required under the KAFB Hazardous Waste Facility Permit and other applicable law.
2. Field Activities. All activities related to collection of samples, oversight of contractor field activities and collection of field measurements.

3. Public Outreach. Participation, in cooperation with USAF, in public education and public participation activities in accordance with Federal and State requirements for public involvement.
4. Technical Committees. Participation in technical committees established by or at the direction of USAF that support evaluations with respect to the BFF project.
5. Program Support Costs. Allocable program costs necessary to support NMED's ability to implement its corrective action program, including costs of general program management and supervision; participation in conferences, seminars or work groups related to DERP-eligible site cleanup; policy development, clerical support; computer support and database management; preparation and administration of this MOA, including preparation of NMED cost estimates.
6. Other. NMED's use of any funds provided as described herein for any other activity is not authorized except by the express written consent of USAF.

Nothing in this MOA shall be construed to provide for reimbursement of NMED for regulatory enforcement activities or change the cleanup standards selected for the BFF project selected pursuant to law.

#### **D. COOPERATIVE AGREEMENTS**

Reimbursement for services described in Section C will be accomplished under the authority of 10 U.S.C. § 2701(d) using Federal procedures for cooperative agreements. The parties agree that cooperative agreements entered into under this MOA will be for a term of no more than two years and will be substantially in the form of Exhibit A, attached hereto. The parties may enter into an initial cooperative agreement and subsequent cooperative agreements as necessary under this MOA.

#### **E. LIMITATIONS**

Reimbursement for services under this MOA and related cooperative agreements shall not exceed a total of \$750,000 for State fiscal years 2016, 2017 and 2018. NMED may ordinarily request that up to one-third of the total services funds be provided during any State fiscal year. USAF may approve an annual budget that exceeds one-third of the total services funds if NMED demonstrates the need for a higher percentage based on the scope of the work projected during the fiscal year. All activities described 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 Act, 31 U.S.C. § 1341.

This MOA is neither a fiscal nor a funds obligation document. 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. Only a cooperative agreement executed pursuant to this MOA shall constitute an obligation of funds by USAF.

**F. PROGRESS MEETINGS**

NMED and USAF shall meet quarterly, or as needed, to review progress on implementation of this MOA. Nothing in this provision shall prevent the parties from meeting at any other time to discuss regulatory progress or other matters described in this MOA.

**G. DURATION OF AGREEMENT, MODIFICATION AND TERMINATION**

The MOA will be effective when signed by both parties, and may be amended at any time by the mutual written consent of the parties. The parties will review the MOA at least annually to determine whether it should be revised or terminated. The MOA may be terminated by providing a 90 day, advance written notice to the other party. Unless expressly renewed in advance, this MOA will terminate by its own terms three years after its effective date.

**H. SAVINGS CLAUSE**

Any terms of the MOA found to be inconsistent with local, State or Federal law, or current USAF, Department of Defense or NMED directives or written policies will be invalid, but the remaining terms will remain in effect.

**I. EFFECTIVE DATE**

This MOA shall be effective upon execution by both parties. This MOA may be executed in multiple counterparts each of which is deemed an original of equal dignity with the others and all of which are deemed one and the same instrument.

**THE PARTIES HERETO HAVE EXECUTED THIS MOA:**

**NEW MEXICO ENVIRONMENT DEPARTMENT**


By:  Date: 12/1/2015  
Ryan Flynn, Cabinet Secretary  
New Mexico Environment Department

By:  Date: 12/1/15  
Marlene Cordova, Chief Financial Officer  
New Mexico Environment Department

Approved as to Form and Legal Sufficiency:

By:  Date: 12/1/15  
Jeffrey M. Kendall, General Counsel  
New Mexico Environment Department

**UNITED STATES AIR FORCE**

By:  Date: 12/02/2015  
Mark Correll  
Deputy Assistant Secretary  
(Environment, Safety, Infrastructure and  
Installation Energy)

**EXHIBIT A**  
**FORM OF COOPERATIVE AGREEMENT**

**Cooperative Agreement No. \_\_\_\_\_**

**United States Department of the Air Force and New Mexico Environment Department  
Memorandum of Agreement  
Cooperative Agreement**

This cooperative agreement (“CA”) is made pursuant to the Memorandum of Agreement between the New Mexico Environment Department (“NMED”) and the United States Air Force (“USAF”) for Funding to Conduct Regulatory Activities at Kirtland Air Force Base Bulk Fuel Facility Solid Waste Management Units ST-106 and SS-111 signed on \_\_\_\_\_ 2015 (the “MOA”). The parties to this CA are the USAF on behalf of the United States and NMED, an executive agency of the State of New Mexico.

**1. SCOPE OF WORK**

The work to be accomplished by NMED under this CA shall consist of the approved eligible services set forth in the MOA, the KAFB Hazardous Waste Facility Permit and its corrective action provisions.

**2. PERFORMANCE PERIOD**

This CA shall apply to approved, eligible services provided by or through NMED during the period beginning on the date this CA has been executed by NMED and the USAF and ending 30 June 2017.

**3. AWARD AMOUNT**

The award amount is set forth in Table 1, attached hereto. USAF agrees to reimburse NMED for approved eligible services up to the amount specified in Table 1. USAF’s obligation to reimburse costs hereunder is limited to the obligated awarded amount. Nothing in this CA shall be interpreted to require performance or payment by USAF in violation of the Anti-Deficiency Act.

NMED shall notify the USAF in writing when 80% of the funded amount for the fiscal year has been expended. Except as provided below, NMED should not continue performance under this CA or otherwise incur costs in excess of the amount specified in Table 1.

NMED may request an increase in the award amount specified in Table 1. Requests for additional funds may be made by NMED and should be submitted at the time of the annual funding review or when NMED expends 80% of the funded amount, whichever comes first. Any increase in the award amount must be reflected in a modification to Table 1 signed by the USAF Grants Officer.

If the award amount in Table 1 is increased, any eligible cost NMED incurred before the increase that is in excess of the award amount will usually be reimbursed to the same extent as if incurred afterward, unless the Grants Officer issues a termination or other notice directing that the increase is solely to cover other specified expenses.

#### **4. ALLOWABLE COSTS**

NMED shall invoice USAF only for direct and indirect costs which are allowable in accordance with Office of Management and Budget (“OMB”) Cost Principles for State, Local and Indian Tribal Governments, OMB Circular A-87 (codified at 2 C.F.R. § 225). Specifically, for State costs to be allowable, they must be: necessary and reasonable for proper and efficient performance and administration of this CA; allocable to this CA; and authorized or not prohibited under State or local laws or regulations. Indirect costs may include overhead calculated using the indirect rate for the State of New Mexico approved by the Environmental Protection Agency.

NMED may invoice USAF for direct and indirect costs incurred between 1 July 2015 and the commencement of the performance period described in Section 2. USAF agrees to reimburse NMED for such costs to the extent they are allowable as pre-award costs under OMB Circular A-87. Specifically, OMB Circular A-87 defines pre-award costs as those incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable to the extent that they would have been allowable if incurred after the date of the award.

#### **5. INVOICING AND REPORTING**

NMED will submit invoices to the USAF (to the Financial and Technical Representatives identified in Section 11) within 60 days after the end of each New Mexico state fiscal year quarter in sufficient detail to allow USAF to relate the costs invoiced to the benefits received and services performed pursuant to the KAFB Hazardous Waste Facility Permit and its corrective action provisions. Additional details, including daily timesheet personnel data, shall be made readily available upon request. Invoices shall be supplemented with statements of any change in rates and a detailed justification for any such changes. Invoices shall be reasonably consistent with the expectations regarding costs, benefits, and outcomes in the MOA and this CA, except to the extent site conditions or other factors have changed since the last conference under Section F of the MOA. USAF waives reports required by 32 C.F.R. § 33.41 as long as NMED documentation shows the nature of State costs and applicable indirect rates. USAF reserves its right to require additional reports in accordance with 32 C.F.R. §§ 33.40 and 33.41 or documentation of underlying invoices. Nothing in this CA shall be construed to conflict with the requirements of the New Mexico Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 to -12.

## **6. PAYMENT**

USAF agrees to make payment of allowable costs incurred pursuant to the terms of this CA in accordance with 32 C.F.R. § 33.21 within 30 days of the date of each NMED invoice. If there is any undue delay between the date of the actual invoice and the receipt of the invoice, USAF shall notify NMED within 5 days of the receipt of the invoice so an accommodation can be made to adjust the payment due date.

## **7. EQUIPMENT, PROPERTY AND DOCUMENTS**

Equipment or property purchased or acquired by NMED with funds provided as described in this MOA shall be the property of NMED. Documents supporting expenditures for services provided by NMED under this CA shall remain the property of NMED.

## **8. ACCOUNTING PROCEDURES AND AUDITS**

Pursuant to 32 C.F.R. § 33.20, NMED must establish and maintain fiscal and administrative controls for expending and accounting for all funds provided pursuant to this CA. As of the date of this CA, USAF acknowledges that NMED's fiscal and administrative controls are consistent with 32 C.F.R. § 33.20. NMED is responsible for obtaining audits in accordance with OMB Circular A-133.

## **9. MODIFICATIONS**

Modifications agreed to by the parties may be issued by the Grants Officer for any changes to the scope of work and any increase or decrease in funds specified in Table 1. Bilateral modifications require the signatures of an authorized representative of the State and the Grants Officer.

USAF may implement administrative changes to this CA as unilateral modifications. Administrative changes include any increase in the funds specified in Table 1 for work currently included in the scope of work, changes in the Grants Officer, points of contact for the USAF, and correction of obvious typographical or calculation errors. Unilateral modifications require the signature of the Grants Officer only and will be effective upon delivery to NMED.

NMED may implement the following unilateral modifications upon submission to the Grants Officer: changes in points of contact for NMED and correction of obvious typographical or calculation errors.

## **10. FOLLOW ON COOPERATIVE AGREEMENTS**

The parties may enter into subsequent cooperative agreements as necessary under the MOA.

## **11. POINTS OF CONTACT**

The contact persons for each party under this CA are:



NMED:

[Insert Project Officer]

[Insert Bureau]

New Mexico Environment Department

Santa Fe, New Mexico 87502

[Insert Bureau Phone Number]

USAF:

Only the Grants Officer is authorized to terminate, extend, modify and obligate or de-obligate funds under this CA. The Grants Officer has delegated administrative responsibilities to an Administrator, who has appointed a Technical Representative who will assist in managing the day-to-day activities necessary to accomplish the services specified in this CA.

[Grants Officer]

[Administrator]

[Technical Representative]

[Financial Representative]

## **12. DISPUTE RESOLUTION**

The parties agree to attempt to informally resolve all disputes that arise under this CA at the lowest level possible. If a dispute concerning payment by USAF under this CA cannot be resolved informally, NMED may submit a claim to be processed in accordance with 32 C.F.R. § 22.815, including alternative dispute resolution if the parties so elect.

## **13. TERMINATION**

The Grants Officer may terminate this CA for cause pursuant to 32 C.F.R. § 33.43 "Enforcement" or for convenience with the consent of NMED pursuant to 32 C.F.R. § 33.44(a), "Termination for Convenience." NMED may terminate this CA at any time for convenience upon written notification to USAF in accordance with 32 C.F.R. § 33.44(b).

## **14. ACCESS TO AND RETENTION OF RECORDS**

Pursuant to 32 C.F.R. § 33.42, NMED must provide access to records that relate to its performance under this CA. NMED agrees to retain all such records for at least 3 years following completion or termination of this CA.

## **15. PROCUREMENT**

NMED may use its own procurement procedures, which reflect State laws and regulations, provided such procedures satisfy the requirements of 32 C.F.R. § 33.36(b) - (i). NMED must not contract for services performed under this CA with any party that is debarred or suspended or is

otherwise excluded from, or ineligible for, participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension" and 32 C.F.R. § 33.35 issued thereunder.

## **16. ASSURANCES**

By signing this CA or accepting funds under this CA, NMED assures that it will comply with applicable provisions of the following national policies prohibiting discrimination:

A. On the basis of race, color or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*) as implemented by Department of Defense ("DoD") regulations at 32 C.F.R. part 195.

B. On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. § 6101 *et seq.*), as implemented by the Department of Health and Human Services regulations at 45 C.F.R. part 90.

C. On the basis of handicap in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) as implemented by Department of Justice regulations at 28 C.F.R. part 41 and DoD regulations at 32 C.F.R. part 56.

NMED agrees to comply with the requirements regarding debarment and suspension in Subpart C of the OMB guidance in 2 C.F.R. part 180, as implemented by the DoD in 2 C.F.R. part 1125. NMED also agrees to communicate the requirement to comply with subpart C to persons at the next lower tier with whom NMED enters into transactions that are "covered transactions" under subpart B of 2 C.F.R. part 180 and the DoD implementation at 2 C.F.R. part 1125.

NMED agrees to comply with the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) as implemented by the Office of Personnel Management at 5 C.F.R. part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or in part with Federal funds.

NMED agrees to comply with the requirements regarding a drug-free workplace in Subpart B of 32 C.F.R. part 26, which implements sections 5152-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D, 41 U.S.C. 701 *et seq.*)

NMED agrees that no member or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this CA, or to any benefit arising from it, in accordance with 41 U.S.C. § 22.

## **17. NMED'S RESERVATION OF RIGHTS**

Notwithstanding any other provision of this CA, NMED shall retain any statutory right it may have to recover costs incurred in association with providing services to USAF not reimbursed under this CA.

## **18. AUTHORITIES**

NMED is the department within the executive branch of the New Mexico State Government charged with administration and enforcement of the Hazardous Waste Act, NMSA 1978, §§ 74-4-1 to -14, and the Hazardous Waste Regulations, 20.4.1 NMAC. This CA will aid NMED in implementing and carrying out its duties under the Hazardous Waste Act and the KAFB Hazardous Waste Facility Permit with respect to KAFB, and is consistent with NMSA 1978, § 74-1-6(C) of the Environmental Improvement Act and NMSA 1978, §§ 74-4-4.2 and 74-4-10 of the Hazardous Waste Act.

USAF enters into this CA under the authority of 10 U.S.C. § 2701(d).

**THE PARTIES HERETO HAVE EXECUTED THIS CA:**

**ON BEHALF OF THE NEW MEXICO ENVIRONMENT DEPARTMENT**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Ryan Flynn, Cabinet Secretary

**ON BEHALF OF THE UNITED STATES OF AMERICA**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Grants Officer

TABLE 1 TO COOPERATIVE AGREEMENT NO. \_\_\_\_\_

AWARD AMOUNT TABLE

For the [insert effective date of CA] through 30 June 2017

Modification No.: 0	Modification Type: Initial	Date:	
Fund Type	Funded to Date	Funded this Action	Total Obligated