

Memorandum of Agreement between the U.S. Department of Energy and the Pueblo de San Ildefonso

A. Introduction

This Memorandum of Agreement (“MOA”) is made between the Pueblo de San Ildefonso (“Pueblo”), a federally recognized Indian Tribe, and the U.S. Department of Energy (“DOE”), through the Los Alamos Field Offices of the National Nuclear Security Administration (NNSA) and the Office of Environmental Management (EM), (henceforth, “Parties” or “Party” for the singular). DOE and the Pueblo are amending the 2014 MOA for the purpose of adding the newly-established EM-LA Field office as a signatory to the agreement, changing the DOE Points of Contact, and making corrections to the text. This MOA and all protocols developed pursuant to it apply to all offices, personnel, agents, consultants and contractors of DOE. The purpose of this MOA is to strengthen the existing relationship between the Parties as evidenced in the Restatement of ACCORD signed by the parties and dated October 20, 2005. Article III of the ACCORD contemplates that it will “provide the foundation and framework for developing agreements between the parties to address and resolve specific issues of mutual concern.” It is in this spirit and letter of the ACCORD that the parties enter into this MOA. Specifically, this MOA establishes and documents specific procedures for access to Pueblo lands within the exterior boundaries of the Pueblo (“Pueblo Lands”), and information, data sharing, and responding to inadvertent discoveries consistent with the government-to-government relationship generally recognized in the ACCORD. This MOA shall be used by the Parties to facilitate the Pueblo’s involvement in DOE’s activities on Pueblo Lands, and DOE’s Los Alamos Site on which is located Los Alamos National Laboratory (LANL) and to respond to requests for access to Pueblo Lands, information, and data sharing, and to inadvertent discoveries.

As with the ACCORD, the parties recognize that implementation of this MOA will require a comprehensive effort to educate members and officials of the Pueblo and agents, employees, contractors, and subcontractors of DOE and other interested Federal, State, and County agencies of the government-to-government relationship between DOE and the Pueblo and the terms of this MOA. The parties further recognize that since the inception of the ACCORD, other agreements may have been entered into by the Pueblo and DOE contractors referencing the ACCORD, including, but not limited to, for example, the 2009 Cooperative Agreement between the Pueblo and Los Alamos National Security, LLC (LANS), and that the terms of the MOA and its related protocols may differ from the terms included in those agreements. The parties agree to amend or modify such agreements to resolve any conflicting provisions, or, as appropriate, terminate such agreements.

The intent of this MOA is to facilitate a cooperative effort regarding DOE's activities on Pueblo Lands and to provide procedures by which the Pueblo and DOE and DOE contractors will coordinate and carry out DOE activities. The MOA addresses responsibilities and functions that must be coordinated.

B. Scope of Agreement

DOE desires to continue to conduct activities on Pueblo Lands. This MOA is designed to apply to any activities that DOE or its contractors desire to conduct on Pueblo Lands. This MOA facilitates the Pueblo's involvement in DOE's activities and anticipates the need of DOE, and its contractors, to access Pueblo Lands, as well as to protect and share confidential information held by the Pueblo or by other federal agencies. This MOA sets forth responsibilities of the Pueblo and DOE concerning requests to access Pueblo Lands and data sensitive to the Pueblo to help facilitate DOE's activities.

The Pueblo desires to continue to conduct activities at ancestral sites within DOE property at LANL, in particular the sites known as Tsirege, Nake muu, and such other sites to be listed by the Pueblo. This MOA is designed to apply to activities that the Pueblo desires to conduct on DOE property at LANL.

C. Nature of Agreement

This MOA serves as the underlying Agreement between the Parties concerning the Pueblo's involvement in DOE's activities on Pueblo Lands. DOE shall ensure that its contractors are aware of, and comply with, the requirements of this MOA and associated protocols. Requirements for the flow-down of provisions of this MOA and protocols to any such agreement are anticipated in carrying out any DOE activity on Pueblo Lands. In particular, the Parties anticipate that DOE and its contractors will need 1) access to Pueblo Lands, 2) access to confidential data (as defined in the Protocol for Protecting Confidential Pueblo Information) that may already exist within the Pueblo's or other agencies' resources, and 3) access to the Pueblo Lands for purposes of environmental surveillance or data gathering. This MOA requires DOE and its contractors to protect confidential Pueblo information, and to obtain different types of access permits designed specifically for each type of access request. This MOA also requires DOE and its contractors to comply with applicable Pueblo laws which have been provided to DOE.

DOE and its contractors are required to comply with the terms and conditions of each type of access permit as provided therein. The Parties also anticipate that the activities of DOE and its contractors may result in "inadvertent discoveries" of cultural items as new data is gathered or when performing ground-disturbing activities on Pueblo Lands or on DOE property at Los Alamos, New Mexico. As defined in NAGPRA (25 USC 3001 (3)), "cultural items" means

Native American human remains, funerary objects placed near individual human remains as part of a death rite or ceremony, sacred objects, and objects of cultural patrimony. This MOA requires DOE and its contractors to follow the protocols between the parties applicable to inadvertent discoveries of cultural items. The Protocol for Inadvertent Discoveries of Native American Human Remains and Cultural Items will apply to all ground disturbing activities permits issued by the Pueblo.

1) Protocols

Protocols for confidentiality, access to Pueblo Lands and DOE land, data collection, and inadvertent discoveries of Native American human remains and cultural items are developed to implement this MOA. They may be revised, amended, or supplemented without amending this MOA.

Additional protocols may be developed and agreed to between the Pueblo and DOE as needed to implement this MOA.

2) Additional Subsidiary Agreements

Additional specific agreements involving activities that DOE desires to carry out on Pueblo Lands, may be executed in relation to DOE's proposed activities on Pueblo Lands. Any such additional agreements will be subject to the terms of this MOA, and the implementing protocols.

The Parties expect that permits will be issued by the Pueblo for several purposes including, but not limited to: (1) Access permit for observation purposes only; (2) Access permit for ground disturbing activities, which will refer to the protocols for treatment of inadvertent discoveries. Confidentiality requirements in this MOA, protocols, and other agreements between the Pueblo and DOE shall apply to all permits issued by the Pueblo, consistent with the Protocol for Protecting Confidential Pueblo Information; and (3) Permit for data sharing with DOE by Pueblo and other federal agencies. The Pueblo may request other federal agencies to share data relating to the Pueblo if DOE makes such a request to the Pueblo. DOE will make certain that the Pueblo receives copies of all data shared.

D. Points of Contact

DOE and the Pueblo will each designate representatives to act as the point of contacts for this MOA. Contact information is provided in Attachment A to this MOA. Either Party may change its point of contact at any time by providing written notice to the other Party. The following points of contact are designated by each of the Parties:

1) Pueblo Designees

Generally, the Pueblo's Primary Point of Contact shall be its Department of Environment and Cultural Preservation Director or his designee. The Pueblo's backup point of contact shall be the Natural Resources Department Director. However a particular protocol or process may require contact with an additional person such as the Pueblo's Governor.

2) DOE Designees

DOE's Primary Points of Contact shall be the Manager of the DOE EM Los Alamos Field Office or designee, and the NNSA Los Alamos Field Office Assistant Manager of National Security Missions or designee.

E. Limitations

1. This Agreement does not create any independent right of action subject to judicial review.
2. Nothing in this MOA shall be deemed to affect DOE's obligations under the Freedom of Information Act or DOE's ability to continue to assert exemptions with regard to information requests.
3. This MOA shall not be construed to grant, expand, create, or diminish any legally enforceable rights, benefits, or trust responsibilities, substantive or procedural, not otherwise granted or created under existing law. Nor shall this MOA be construed to alter, amend, repeal, interpret, or modify the Pueblo's sovereignty or sovereign immunity, any treaty rights, or other rights of the Pueblo or preempt, modify, or limit the exercise of any such rights.
4. Nothing in this MOA shall be applied to authorize the taking of species listed pursuant to the Endangered Species Act of 1973, or any activity that would jeopardize the continued existence of any listed species or destroy or adversely modify designated critical habitat.
5. This MOU in no way restricts either of the parties from participating in any activity with other public or private agencies, organizations, or individuals.
6. This MOU is neither a fiscal nor a funds obligation document. Nothing in this MOU authorizes or is intended to obligate the parties to expend, exchange, or reimburse funds, services, or supplies, or transfer or receive anything of value.
7. This MOU 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.

8. Subject to the Freedom of Information Act (5 U.S.C. 552), decisions on disclosure of DOE information to the public regarding activities and programs referenced in this MOU shall be made by DOE following consultation with the other party.

F. Governing Law and Jurisdiction

This MOA shall be construed in accordance with the laws of the United States and applicable Pueblo law.

The Pueblo has the right as a government to protect its Pueblo from conduct and activities that threaten or directly affect its political integrity, economic security, health and welfare. In order to protect the Pueblo's cultural resources, any unlawful damage, destruction, disturbance or defacement of any archeological resource located on the Pueblo will be considered a violation of Section 6 of the Archeological Resources Protection Act ("ARPA"), 16 U.S.C. § 470 aa-mm, and may result in fines up to \$20,000 and up to 2 years in prison. Any violation of ARPA will be referred to the United States Department of Justice, along with all supporting documentation related to the violation. The Parties understand and agree that the provisions of ARPA apply to all DOE employees and contractors in the conduct of their activities on the Pueblo under this MOA.

Violation of any terms of any permit issued by the Pueblo to implement this MOA may be considered a trespass which may result in immediate exclusion from the Pueblo of the individual who engaged in actions that violate either the permit or ARPA, or both.

G. Acknowledgement and Permit

Each person entering Pueblo land in order to implement this MOA must sign an acknowledgment of DOE's obligations under this MOA, and carry the permit issued by the Pueblo at all times while on Pueblo Lands. The Pueblo will provide the acknowledgment form for signature to accompany each permit application, and shall issue permits needed to implement this MOA.

H. Amendment/Termination

This MOA may be modified or amended by written agreement between the DOE Los Alamos Field Office Manager or designee and Pueblo Governor, and this MOA may be terminated by any party upon 30 days written notice to the other. This MOA is effective when signed by all parties and will remain in effect until terminated as described herein.

I. Agreement to Terms

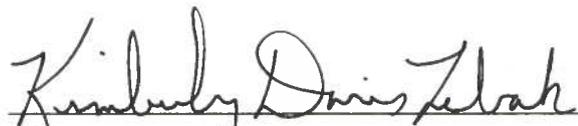
By their signatures, the Parties hereto agree to the terms of this MOA, and have executed this MOA as of the latest date written below.

PUEBLO DE SAN ILDEFONSO

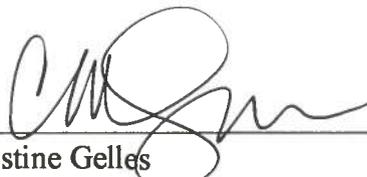

James R. Mountain, Governor

6/18/15
Date

UNITED STATES DEPARTMENT OF ENERGY


Kimberly Davis Lebak
NNSA Los Alamos Field Office Manager

6/18/15
Date


Christine Gelles
EM Los Alamos Field Office Acting Manager

6/18/15
Date

**ATTACHMENT A:
MOA POINTS OF CONTACT INFORMATION**

PUEBLO DESIGNEES:

Governor, If Necessary:	Primary Point of Contact:
Governor James R. Mountain Pueblo de San Ildefonso 02 Tunyo Po Santa Fe, NM 87506 Office: (505) 455-2273 Fax: (505) 455-7351 Cell: (505) 412-3974 Email: governor@sanipueblo.org	Raymond Martinez DECP Director/Tribal Risk Assessment Program Manager Pueblo de San Ildefonso 02 Tunyo Po Santa Fe, NM 87506 Office: (505) 455-2273 ext. 127 Fax: (505) 455-1120 Cell: (505) 231-4849 Email: rmartinez@sanipueblo.org
Secondary Point of Contact:	
Stephen Martinez Natural Resources Director Pueblo de San Ildefonso 2 Tunyo Po Santa Fe, NM 87506 Office: (505) 455-4138 Fax: (505) 455-4163 Cell: (505) 670-2606 Email: stmartinez@sanipueblo.org	

DOE DESIGNEES:

DOE/EM-LA:	DOE/NNSA/NA-LA:
Christine Gelles Acting Site Manager Environmental Management /Los Alamos Field Office 3747 W. Jemez Rd, MS-A316 Los Alamos, NM 87544 Office: (505) 667-4995 Fax: (505) 606-2132 Email: Christine.Gelles@em.doe.gov	Jody Pugh Acting Assistant Manager National Security Missions National Nuclear Security Administration/ Los Alamos Field Office 3747 W. Jemez Rd, MS-A316 Los Alamos, NM 87544 Office: (505) 665-3940 Fax: (505) 665-5948 Email: jody.pugh@nnsa.doe.gov

** The Point of Contact Information may change upon written notice to the other Party. Each Party is responsible to update the Point of Contact Information as needed.

Protocol for Protecting Confidential Pueblo Information

This Protocol supplements the Memorandum of Agreement (MOA) dated June 18, 2015, between the U.S. Department of Energy (“DOE”) and the Pueblo de San Ildefonso (Pueblo) (collectively referred to herein as Parties, or Party in the singular) to facilitate the Pueblo’s involvement in DOE activities within the exterior boundaries of the Pueblo and LANL. The Parties acknowledge that this Protocol is subject to the terms of the MOA, and further understand that the MOA contemplates additional Protocols and agreements. For example, if DOE desires to obtain data located on Pueblo Land, then DOE agrees to comply with the *Protocol for Access to Pueblo Lands*.

For the purpose of this Protocol, Pueblo Land is defined as all land within the exterior boundaries of the Pueblo de San Ildefonso.

1. Relationship with the MOA and other Protocols; Order of Precedence

The terms and conditions of the MOA are controlling, and may not be modified or expanded except in writing signed by the Parties. In the event of any expressed conflict between the provisions of the MOA and the provisions of this Protocol, the provisions of the MOA will govern and control with respect to the interpretation of this Protocol. In the event of any conflict between the provisions of this Protocol and any other protocol made under the MOA, the protocol directly addressing the disputed subject matter shall govern and control the interpretation of the dispute.

2. Limitations on Access and Data Collection

DOE and its Contractors are authorized, subject to the terms of the MOA, *Protocol for Access to Pueblo Lands*, and Access Permits, to access the Pueblo Lands identified in the Access Permits, for the sole purpose of certain data collection. In no event shall DOE or its Contractors have access to collect data beyond the extent specified in any Access Permit. Data collection authorized under this Agreement shall be limited to the collection of Sensitive Data identified in the Access Permit and within the locations identified in the Access Permit.

3. Effective Date and Duration of Protocol and Obligations

DOE agrees that obligations hereunder are effective as of the date this Protocol is executed. Obligations of DOE and its Contractors hereunder shall survive the term of this Protocol and shall continue indefinitely. Nothing in this Protocol shall require DOE to delay responding to a request made under the Freedom of Information Act within the required time frame. Confidential Pueblo Information and Sensitive Data that is required to be provided to a federal or state regulatory agency is exempt from the requirements of this Protocol. DOE shall provide copies of such information to the Pueblo at the time it provides the information to the regulatory agency.

The documents shall be sent to the Governor of the Pueblo and to the Pueblo Point of Contact as specified in Section D.1 and Attachment A of the MOA.

4. Definitions

- a. "Confidential Pueblo Information" means all information of or about the Pueblo that is religious, cultural, ceremonial, proprietary, financial, technical, commercial, privileged, sensitive, or confidential in nature or content that relates to natural resources, cultural resources, or resource management practices of the Pueblo, and includes, but is not limited to, information pertaining to:
 - i. any federally threatened, endangered, or candidate species;
 - ii. habitat or ecosystem conditions on Pueblo lands;
 - iii. natural resource management practices or plans of the Pueblo;
 - iv. location and nature of sites of traditional cultural significance to the Pueblo;
 - v. commercial activities of the Pueblo;
 - vi. information that the Pueblo would not customarily release to the general public; and
 - vii. information gathered on Pueblo Lands related to cultural or natural resources.
- b. The Pueblo shall identify in writing to DOE what information it has determined to be Confidential Pueblo Information.
- c. "Sensitive Data" means that information (including but not limited to geotechnical, hydrographic, geomorphological, and ground and surface water quality, demand and usage data), gathered or collected by DOE pursuant to this Protocol, including
 - i. Control Surveys: Field notes, global positioning system data (GPS data), point files, and maps for establishing survey control end points.
 - ii. Hydrographic Surveys: Field notes, GPS data, and point files for cross-section surveys of the river channel, field notes describing river bed material at cross-section locations, and samples of river bed material and laboratory analysis of material gradation.
 - iii. Geomorphic Surveys: Field notes and sketches, or GPS files, defining river channel and floodplain locations and characteristics for assessing past changes in the river over time, and anticipated future changes to the river.
 - iv. Geotechnical Investigations: Field notes and sketches, reports, maps, or GPS files depicting subsurface geology and soil information.
 - v. Environmental Site Assessments: Field notes and other data collected to determine whether a property is, has been, or has the potential to have a hazardous substance or petroleum presence by a series of testing and interviews of current and past owners or managers. (Note: Environmental Site Assessments are distinct from environmental assessments provided under the National Environmental Policy Act [NEPA].)
 - vi. Water quality and quantity data of the Pueblo's water resources, including surface water and groundwater and related suspended sediments;
 - vii. Products: Products that are technical and obtained by DOE or its Contractors from the data collection activities specified in Sections 4(a)(i) through 4(b)(vii) of this Paragraph.

- d. "Information" means any verbal, visual, pictorial, specimen, graphic, electronically-stored, printed, recorded, or written material acquired from the Pueblo or other person or entity or obtained in any way and includes, but is not limited to reports, summaries, data, maps, photographs, correspondence, phone call records, audio or video recordings, and any other information pertaining to the Pueblo or its property, assets, or interests, including information in the custody of DOE.

5. Use of Confidential Pueblo Information and Sensitive Data

Confidential Pueblo Information and Sensitive Data arising from or relating to the Pueblo shall be used by DOE solely for purposes described in the MOA and cannot be used for any other purposes by DOE or its Contractors without prior written authorization of the Governor of the Pueblo (Governor).

- a. DOE acknowledges that serious damage could result to the Pueblo if any of the Confidential Pueblo Information is disclosed to any third party other than as provided herein and that such Confidential Pueblo Information has been furnished to DOE and its Contractors subject to, and in consideration of, DOE's agreement to keep the information confidential as intended herein, to the extent possible under federal law and state law.
- b. DOE shall not copy, cite, or incorporate any Confidential Pueblo Information in any document or publication without obtaining prior written consent from the Governor, as provided in Sections 6 and 7 below, for either the use of such Information or the use of certain redacted or summarized Information. DOE shall provide a 60 day opportunity for the Pueblo to review and consult on a draft of any document containing Confidential Pueblo Information or Sensitive Data arising from or relating to the Pueblo prior to its disclosure or completion as a final document, unless otherwise required by law. The Pueblo recognizes that DOE responses to requests for records under the Freedom of Information Act have response time parameters, and the Pueblo will be mindful of such. On day 61, following DOE's request, Pueblo consent shall be deemed given, unless the Pueblo states otherwise in writing.
- c. Non-disclosure agreements will be included in contract terms and the non-disclosure agreements shall be signed by DOE's contractors prior to disclosure of any Confidential Pueblo Data or Sensitive Data to DOE's contractors.

6. Retention of Sensitive Data by DOE

- a. The Pueblo agrees that DOE may retain Sensitive Data. DOE shall retain any original documents and electronic versions of Sensitive Data, and provide copies of all retained Sensitive Data to the Pueblo. When Sensitive Data is acquired or prepared by a Contractor of DOE, such Contractor may also retain a copy of the Sensitive Data, provided that the Contractor or DOE provides copies to the Pueblo. In the event DOE updates products or produces new, similar products from the Sensitive Data, DOE shall provide copies of such updated or similar, but new products to the Pueblo.

- b. The DOE agrees that it will not release Sensitive Data, including analytical results for samples, to the general public or any other governmental agency without providing a 60 day opportunity for consultation with the Pueblo. DOE shall provide a 60 day opportunity for the Pueblo to review and consult on the proposed release of Sensitive Data to the public or submitted to any other governmental agency unless otherwise required by law. The Pueblo recognizes that DOE responses to requests for records under the Freedom of Information Act have response time parameters, and the Pueblo will be mindful of such.
- c. The DOE agrees that it will not publish any Sensitive Data arising from Pueblo land without providing prior written notice and a 60 day consultation period to the Pueblo.
- d. A concerted effort will be made by both parties to share Sensitive Data that will not infringe upon the proprietary nature of such data.
 - i. For samples collected by DOE, part of each sample will be made available to accompanying Pueblo personnel (split sampling). An exception to this is air sampling media which cannot be split for technical reasons. For air monitoring, duplicate sampling is preferred.
 - ii. DOE shall provide the Pueblo with test results on all samples collected on Pueblo Land. The entire process of sample handing, laboratory analysis, quality control, quality assurance, compilation, reduction, and communication of data will be designed to be completed within six months of sample collection. If unforeseen delays occur, the Pueblo will be notified and results will be provided in a timely manner after receiving quality assured data. More timely access to data will be sought through implementing new technologies such as internet connections, subject to the terms of the underlying MOA and any applicable Protocols between the Pueblo and DOE.

7. Disclosure of Confidential Pueblo Information

- a. DOE shall keep all Confidential Pueblo Information confidential, and shall not disclose any Confidential Pueblo Information in any manner whatsoever, in whole or in part, to any person or entity outside of DOE or its contractors, except disclosures:
 - i. to another person approved in writing by the Governor upon the receipt by the Pueblo and DOE of a Confidentiality Agreement acceptable to the Pueblo and DOE executed by the person;
 - ii. as otherwise required by applicable law; or
 - iii. as otherwise authorized by the Pueblo de San Ildefonso Council.
- b. The requirements of this paragraph shall not extend to any portion of the Confidential Pueblo Information that is or becomes generally available to the public other than as a result of a disclosure by DOE subsequent to the effective date of this Protocol.
- c. In the event that DOE or its Contractors become legally compelled to disclose any of the Confidential Pueblo Information pursuant to this paragraph, DOE and its Contractors who have received the request shall promptly provide notice thereof to the Governor so that the Pueblo, at its sole option and expense, but without obligation to do so, may attempt to seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Protocol. DOE and the Pueblo recognize that *United States Department of Interior v. Klamath*, 532 U.S. 1 (2001),

may apply to certain communications and result in an inability to withhold such Confidential Pueblo information.

8. Restriction on Removal of Confidential Pueblo Information from Pueblo de San Ildefonso Lands

- a. All Confidential Pueblo Information shall remain the exclusive property of the Pueblo and shall not be removed from the Pueblo's land, except as provided in this section.
- b. Upon the written approval by the Governor of an official specific written request by DOE to review Confidential Pueblo Information, DOE may review the specified Information at the Pueblo's Department of Environment and Cultural Protection (DECP) by prior appointment with the Primary Contact Person designated pursuant to Paragraph D(1) of the MOA.
- c. Upon the written approval by the Governor or Pueblo de San Ildefonso Council, of an official specific written request by DOE to remove Confidential Pueblo Information from Pueblo lands, DOE may remove Confidential Pueblo Information from Pueblo lands to carry out Pueblo-authorized purposes so long as:
 - i. only those DOE personnel (or DOE contractors, consultants, or agents) specifically authorized by the Pueblo to review the Information shall have access to it and DOE will take every precaution to secure the confidentiality of the Information;
 - ii. the Information shall not be photocopied, digitally copied, or reproduced in any other manner without prior written consent of the Governor;
 - iii. DOE will maintain and provide to the Pueblo a written record of all such Information including without limitation the date of removal, description of the Information, name of individual removing Information, the purpose and justification, and the date of return;
 - iv. the Information will not be removed for a period longer than 30 days unless otherwise specified by the Pueblo; and
 - v. DOE (or DOE contractors, consultants, or agents) shall return all information, including copies, to the Pueblo upon completion of the authorized purpose or the authorized period, whichever is sooner. The Pueblo shall also have the right to request the immediate return of any and all Information at any time, and DOE (or DOE contractors, consultants, or agents) shall immediately return it. All information shall remain the property of the Pueblo, and not of DOE (or DOE contractors, consultants, or agents).
- d. The Pueblo may develop redacted versions or summaries of Confidential Pueblo Information and, by explicit written approval by the Governor, authorize DOE to retain or publish such Information in the public record or in other documents. However, providing such Information in this or any other form does not indicate that similar or like Information would customarily be released to the public by the Pueblo.

9. Audio and Video Recording and Photography

- a. DOE or its contractors, consultants, or agents are not permitted to make audio or video recordings or to take photographs within Pueblo lands without the prior written permission of the Governor. If requested by the Pueblo, such recording will only be

conducted in the presence of a Pueblo representative designated by the Governor. All photographs and audio and video recordings shall be returned to the Pueblo and DOE shall not keep copies of returned photographs and audio and video recordings of Confidential Pueblo Information.

- b. Notwithstanding the foregoing, DOE may retain certain photographs or audio or video recordings upon written request by DOE and written approval of the Governor for the specified photographs or recordings to document DOE activities.

10. Amendments

This Protocol may be amended, revised, or supplemented without amending the MOA. Amendments, revisions, or supplements to this Protocol may only be made in a written document signed by both Parties.

11. Agreement to Terms

By their signatures, the Parties hereto agree to the terms of this Protocol, and have executed this Protocol as of the latest date written below.

(Signatures on following page)

PUEBLO DE SAN ILDEFONSO


James R. Mountain, Governor

6/18/15
Date

UNITED STATES DEPARTMENT OF ENERGY


Kimberly Davis Lebak
NNSA Los Alamos Field Office Manager

6/18/15
Date


Christine Gelles
EM Los Alamos Field Office Acting Manager

6/18/15
Date

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Protocol for Access to Pueblo Lands

This Protocol supplements the Memorandum of Agreement (MOA) dated June 18, 2015, between the U.S. Department of Energy (“DOE”) and the Pueblo de San Ildefonso (Pueblo) (collectively referred to herein as Parties, or Party in the singular) to facilitate the Pueblo’s involvement in DOE activities within the exterior boundaries of the Pueblo and LANL (Project). This Protocol applies to all offices, personnel, agents, consultants and contractors of DOE that desire access to Pueblo Lands. The Parties acknowledge that this Protocol is subject to the terms of the MOA, and further understand that the MOA contemplates additional protocols and agreements. For example, if the requested access also involves obtaining data located on Pueblo Lands or performing ground disturbing activities on Pueblo Lands, then DOE agrees to comply with the *Protocol for Protecting Confidential Pueblo Information* and *Protocol for Inadvertent Discoveries of Native American Human Remains and Cultural Items*, respectively.

For the purpose of this Protocol, Pueblo Land is defined as all land within the exterior boundaries of the Pueblo de San Ildefonso.

1. Relationship with the MOA and other Protocols; Order of Precedence

The terms and conditions of the MOA are controlling, and may not be modified or expanded except in writing signed by the Parties. In the event of any expressed conflict between the provisions of the MOA and the provisions of this Protocol, the provisions of the MOA will govern and control with respect to the interpretation of this Protocol. In the event of any conflict between the provisions of this Protocol and any other protocol made under the MOA, the protocol directly addressing the disputed subject matter shall govern and control the interpretation of the dispute.

2. Procedure for Obtaining Access

DOE (except as noted in Section 3), its contractors, consultants or agents, seeking to access Pueblo Lands for any reason must obtain an Access Permit issued by the Pueblo de San Ildefonso. The following procedure will be followed for such requests for Access Permits:

- a. The DOE Primary Contact Person, as identified in Section D(2) of the MOA, shall contact the Pueblo de San Ildefonso Primary Contact Person and Backup Contact Person with a written request a minimum of two weeks before the actual requested date of access to Pueblo Lands, subject to the exceptions in Section 3. The written request may be made on a permit application form provided by the Pueblo and shall be accompanied by a signed Acknowledgement Form from each individual requesting access to Pueblo Lands. The Acknowledgement Form, provided by the Pueblo, provides that each individual requesting access to Pueblo Lands understands DOE’s obligations under the MOA, that each individual’s access is conditioned on complying with the terms of the permit and federal law, and that any violation of such permit or federal law may result in prosecution or exclusion from Pueblo land. The requests and Acknowledgement Form may be submitted via electronic mail. At a

minimum, the request shall specify the names of the DOE personnel or contractors, consultants, or agents requesting access, the purpose for accessing Pueblo Lands, a general description of the scope of work to be performed on Pueblo Lands, and a general description of the location(s) of the visit to Pueblo Lands.

- b. The Pueblo Primary Contact Person (or Backup Contact Person), as identified in Section D(1) of the MOA, shall approve or deny the access request within two business days after receipt of the written request and Acknowledgement Form(s). If the request is denied, the reason(s) for doing so shall be stated so that the Pueblo's concern can be addressed in a renewed request. Permits will be processed through the Pueblo Natural Resources Department Director. Based on the request, the Pueblo may grant the following:
 - i. ***Access Permit for Observation Purposes Only.*** If the request is approved and neither involves the physical retrieval of data from Pueblo Lands nor the likelihood of ground disturbing activities, the Pueblo Primary Contact Person shall issue an Access Permit to the DOE Primary Contact Person that describes in detail the terms and conditions, if any, to be applied to the access.
 - ii. ***Access Permit for Ground Disturbing Activities.*** If the request is approved and involves the likelihood of ground disturbing activities, the Pueblo Primary Contact Person shall issue an Access Permit, with the *Protocol for Inadvertent Discoveries of Native American Human Remains and Cultural Items* and the *Protocol for Protecting Confidential Pueblo Information*.
 - iii. ***Permit for Data Sharing.*** If the request is approved and involves the physical retrieval of field, observational, or chemical analysis data from Pueblo offices or Pueblo Lands, or the collection of samples, except those connected to storm or unforeseen events then the Pueblo Primary Contact Person shall issue an Access Permit, consistent with the *Protocol for Protecting Confidential Pueblo Information*.

3. Exceptions to Access Policy

- a. The following DOE key staff (by name and to be updated with staff changes) may seek access to Pueblo Lands under an exception to Section 2 of this Protocol for specific administrative reasons discussed at subsection (c) below:
 - i. DOE Secretary or Administrator of NNSA
 - ii. Managers of the DOE Los Alamos Field Offices
 - iii. Key technical staff of the Los Alamos Field Offices or of LANS identified in writing to the Pueblo by the DOE Field Office Managers or designee.
- b. An appropriate individual named above may request an exception to the permit application requirement by calling the Pueblo Point of Contact for immediate access to the affected location. Items i., ii., and iii below do not require a request for an exception. The notification shall identify the type of exception requested (pursuant to subsection (c) below), provide a general description of the scope of work to be performed on Pueblo Lands, and provide a general description of the location(s) of

the visit to or through Pueblo Lands. Except for items i., ii and iii. below, DOE shall follow-up with a written notification (electronic mail is acceptable) to the Pueblo Primary Contact Person **and** Backup Contact Person.

- c. The exception to the permit application requirement applies only for the following reasons:
- i. Meetings between DOE and the Pueblo called or hosted by the Pueblo.
 - ii. Health and Welfare of the Pueblo. An exception under this provision may be granted to DOE/NNSA to respond to an emergency that threatens the health, safety, and welfare of the Pueblo. If the Pueblo requests DOE to respond to an emergency, DOE shall not be required to seek permission for access to respond.
 - iii. Violation of any federal law, Protocol or Access Permit. An exception under this provision may be granted to DOE to respond to a request from the Governor or the Pueblo Point of Contact indentified in Section D.1 of the MOA to address a reported violation of federal law, applicable Pueblo law, or of any condition of any Protocol under the MOA or Access Permit
 - iv. Safety of DOE employees, contractors, agents or consultants. An exception under this provision may be granted to DOE or contractor staff to respond to an emergency that involves injury to any field staff member that requires medical assistance. This in no way implies that emergency services (such as the Fire Department or Police Department) must seek permission to respond to an emergency situation.
 - v. Contract management and oversight. An exception under this provision may be granted to DOE to respond to issues that arise with one of DOE's contractors, or in the performance of a contract. An appropriate official listed in 3.a. will request the exception pursuant to subsection (b).
 - vi. General Administrative Purposes. An exception under this provision may be granted to DOE for general administrative purposes including, but not limited to, managerial contact with DOE staff or contractors already on Pueblo Lands under an authorized Access Permit. The appropriate official listed in 3.a. will request the exception pursuant to subsection (b).
 - vii. Unforeseen Events. An exception to the Permit requirement is allowed for DOE or contractor staff to respond to unforeseen events that may have affected DOE equipment on Pueblo Lands. Immediately after receiving a call from DOE which requests access to Pueblo Lands pursuant to this exception, the Pueblo DECP Director or designee shall notify the Pueblo's Natural Resources Director for proper internal follow up. Time, date, and location(s) to be visited for each request will be recorded and summarized by DOE. DOE staff shall contact Pueblo staff immediately upon leaving the Pueblo, confirming sites visited and, as appropriate, any data and samples collected.

DOE staff will confirm the above information to Pueblo DECP director by email or other written format within 72 hours of each such visit.

- d. Upon arrival on Pueblo Land, all individuals expecting access under any exception shall check in at the tribal administration office upon arrival and will be granted access to or through Pueblo Lands by the Primary or Backup Contact Person.

4. Data Access Not Involving Physical Access to Pueblo Lands

The procedure for obtaining Access Permits, required by Section 2 of this Protocol, shall be used for requests that involve the retrieval of certain confidential data that does not require physical access to Pueblo Lands. If the request is approved for any of the requests described below, the Pueblo Primary Contact Person shall issue a Data Access Permit together with the *Protocol for Protecting Confidential Pueblo Information* for the following:

- a. **Confidential Data held in Pueblo Offices.** If the request is approved and involves the review of confidential data held in Pueblo offices and such request does not involve DOE, its contractors, consultants, or agents to access Pueblo Lands to obtain the Pueblo data, the Pueblo Primary Contact Person shall make arrangements to submit the requested data to DOE, its contractors, consultants, or agents.
- b. **Confidential Data held in other federal agency files.** If the request is approved and involves the review of confidential data held in other federal agency offices, then the Pueblo Primary Contact Person shall send a disclosure letter to the appropriate federal agency.

5. Amendments

This Protocol may be amended, revised, or supplemented without amending the MOA. Amendments, revisions, or supplements to this Protocol may only be made in a written document signed by both Parties.

6. Agreement to Terms

By their signatures, the Parties hereto agree to the terms of this Protocol, and have executed this Protocol as of the latest date written below.

(Signatures on following page.)

PUEBLO DE SAN ILDEFONSO


James R. Mountain, Governor

6/18/15
Date

UNITED STATES DEPARTMENT OF ENERGY


Kimberly Davis Lebak
NNSA Los Alamos Field Office Manager

6/18/15
Date


Christine Gelles
EM Los Alamos Field Office Acting Manager

6/18/15
Date

Protocol for Inadvertent Discoveries of Native American Human Remains and Cultural Items

This protocol supplements the Memorandum of Agreement (MOA) dated June 18, 2015, between the U.S. Department of Energy (“DOE”) and the Pueblo de San Ildefonso (Pueblo) (Parties, or Party in the singular) to facilitate the Pueblo’s involvement in DOE activities within the exterior boundaries of the Pueblo and LANL. The Parties acknowledge that this protocol is subject to the terms of the MOA, and further understand that the MOA contemplates additional protocols and agreements. For example, to conduct ground disturbing activities on Pueblo Lands, DOE understands that it must comply with the *Protocol for Access to Pueblo Lands*. Further, since any ground disturbing activity on Pueblo Lands will result in data collection, DOE agrees to comply with the *Protocol for Protecting Confidential Pueblo Information*.

For the purpose of this Protocol and for all references to the Native American Grave Protection and Repatriation Act (NAGPRA), Pueblo Lands is defined as all land within the limits of the Pueblo de San Ildefonso exterior boundaries.

1. Relationship with the MOA and other Protocols; Order of Precedence

The terms and conditions of the MOA are controlling, and may not be modified or expanded except in a writing signed by the Parties. In the event of any expressed conflict between the provisions of the MOA and the provisions of this Protocol, the provisions of the MOA will govern and control with respect to the interpretation of this Protocol. In the event of any conflict between the provisions of this Protocol and any other protocol made under the MOA, the protocol directly addressing the disputed subject matter shall govern and control the interpretation of the dispute.

2. Scope of Protocol

This protocol applies only to NAGPRA Cultural Items (as defined at 25 USC 3001 (3)) discovered on Pueblo Lands or at LANL. The Pueblo is considered to have standing to claim cultural affiliation for all human remains and associated material cultural items covered by NAGPRA throughout Pueblo Lands, and for non-Pueblo Native American sites. This Protocol applies to inadvertent discoveries on Pueblo Lands and at LANL for which the Pueblo is considered to have cultural affiliation.

Ground disturbing activities on Pueblo land may take place on locations identified in a sampling plan. More specific information may be requested by the Pueblo pursuant to DOE’s request for access pursuant to the *Protocol for Access to Pueblo Lands*.

3. DOE activities on Pueblo Land.

- a. In the event, DOE and/or its contractors discover human remains or other cultural items while conducting any activity on Pueblo land, DOE and/or its contractors

shall immediately cease the activity, including any trenching, sampling, excavation, and photography.

- b. DOE and/or its contractors shall immediately contact the Pueblo's Governor and the identified Pueblo Point of Contact via telephone and text message, followed by written confirmation by either letter or email, of the discovery.
- c. Neither DOE nor its contractors will assume custody, control, or collection of human remains or other NAGPRA cultural items.
- d. The Pueblo shall take such actions as it deems appropriate to deal with the discovery, and the Pueblo will notify DOE and the DOE contractor that was conducting the activity when the Pueblo determines the activity may continue. In the event that the activity must be delayed for more than five (5) working days, the Pueblo will notify DOE and its contractor as to the anticipated date that activity may resume and whether DOE or its contractor must submit a new request for access.

4. DOE activities on DOE property at LANL.

The Pueblo has standing to claim cultural affiliation for all Ancestral Pueblo (Developmental period through Classic period, ca. AD 900 through 1600) human remains and associated material cultural items covered by NAGPRA throughout LANL, with the exception of the Fenton Hill area near Jemez Springs, and for non-Puebloan Native American sites. This Agreement applies to inadvertent discoveries for which the Pueblo is considered to have cultural affiliation.

a. Procedure upon Discovery/Notification to the Pueblo

When notified of the discovery of human remains or other NAGPRA-related objects, the LANS Cultural Resources Team (CRT) Leader or team archaeologist will arrange to visit the site as soon as practical to determine if the remains are part of a recent crime scene and, if not, whether the remains are likely archaeological and of Native American descent. If the remains are determined to be Native American and not associated with a crime, the LANL CRT Leader or team archaeologist will immediately notify the LASO Cultural Resources Program Manager. The human remains and cultural objects will be evaluated in place to the extent possible. Destructive analysis is prohibited. The LANL CRT Leader or team archaeologist may consult with a qualified physical or forensic anthropologist if necessary. The site will be protected and stabilized or covered as may be appropriate.

Within three (3) working days after being notified of an inadvertent discovery for which the Pueblo is considered to have cultural affiliation, DOE will notify the Pueblo by telephone, with written confirmation; and initiate plans to consult on the appropriate treatment and disposition of the cultural items. DOE will provide the

notification to the Governor, and to the Pueblo Point of Contact identified in Section D.1 of the MOA.

b. Procedure for Handling Human Remains or other Cultural Items

DOE shall treat all human remains and cultural items with respect and dignity in such a way as to avoid any unnecessary disturbance, separation, or physical modification. Excavation will be conducted in such a manner as to ensure the successful recovery and careful preservation of the remains, including the careful documentation of the burial context. DOE will accommodate Pueblo customs and traditions when handling Native American remains or cultural items.

Excavation will be conducted in such a manner as to ensure the successful recovery and careful preservation of the remains, including the careful documentation of the burial context.

In a case where it is not prudent and feasible to leave human remains or cultural items in place until consultation with the Pueblo (for example, there is a danger of erosion, or where contemporaneous activities in the area might cause damage), excavation and removal of human remains and cultural items will be undertaken by DOE using current professional standards for archeological data recovery.

If human remains are removed from the site of their discovery, DOE shall store them in a secure location in keeping with any other agreement in place between the Pueblo and DOE concerning proper curation of human remains.

Typically, a burial is exposed in its entirety prior to the removal of the individual elements and associated funerary objects. This is done so as to ensure that issues of context and overlapping or multiple interments can be resolved prior to removal of the burial.

Photographs and sketches will be made to provide a documentary record of the burial, and to ensure that funerary objects can be re-associated with the burial at the time of disposition. It is emphasized that photographs of the human remains will not be included in reports, rather only line drawings will be used.

A "Human Burial Feature Form" will be filled out for each set of human remains encountered during the intentional excavation.

Individual human elements will be collected separately and wrapped for protection, and will be securely placed into properly labeled bags and containers for transportation and temporary storage. Associated funerary objects, unassociated funerary objects, sacred objects, and objects of cultural patrimony will be provided similar treatment.

In the event that the documentation and removal of a burial takes longer than a single day, the burial will be carefully covered and protected at night prior to its final removal. In order to minimize the possibility that a burial will be left partly exposed over one or more non-working days (such as a weekend), no excavation of a known or suspected burial will be initiated the day prior to a non-working day.

Fences, surveillance cameras, and/or other protective measures will be utilized in excavation areas to minimize the possibility of vandalism of archaeological resources and human remains after work hours. In the unlikely event that vandalism does occur, the Pueblo will be immediately notified and necessary corrective actions will be initiated.

Analysis of human remains recovered from LANL will be performed by a professional physical anthropologist, but will be limited to standard non-destructive "metrical analyses" and non-metrical analyses for cultural ethnicity as required by NAGPRA. Cultural items will be subject to analysis and documentation by photography and line drawings as warranted. There will be no destructive analysis performed on cultural items. Upon completion of analysis, the remains will be carefully wrapped for protection and placed into clearly-labeled containers for short-term storage prior to disposition. The location of analyzed and stored NAGPRA-related objects will be provided to the Pueblo.

c. Options For Disposition Of Human Remains Or Cultural Items

DOE will leave the human remains and cultural items in place whenever possible, unless, in consultation with the Pueblo, the Pueblo requests another disposition. Disposition options include leaving the human remains or cultural items in place, reburial at the TA-72 NAGPRA Management Area, giving the human remains or cultural items to the Pueblo for disposition outside of LANL property, or another disposition mutually agreed to by the Pueblo and DOE after consultation.

If human remains and cultural items are unclaimed, DOE shall retain them until provisions for their disposition are clarified by NAGPRA Review Committee which has been given the responsibility in NAGPRA to promulgate regulations regarding unclaimed remains. All such items will be stored and maintained in accordance with 36 C.F.R. 79 and any other agreements reached as a result of consultation.

d. Notice of Intended Disposition

Prior to the disposition of human remains or cultural objects to the Pueblo, DOE will publish a Notice of Intended Disposition in accordance with 10 CFR 10.6(c).

5. Amendments.

This Protocol may be amended, revised, or supplemented without amending the MOA. Amendments, revisions, or supplements to this Protocol may only be made in a written document signed by both Parties.

6. Agreement to Terms

By their signatures, the Parties hereto agree to the terms of this Protocol, and have executed this Protocol as of the latest date written below.

PUEBLO DE SAN ILDEFONSO



James R. Mountain, Governor

6/18/15

Date

UNITED STATES DEPARTMENT OF ENERGY



Kimberly Davis Lebak
NNSA Los Alamos Field Office Manager

6/18/15

Date



Christine Gelles
EM Los Alamos Field Office Acting Manager

6/18/15

Date

