SETTLEMENT AGREEMENT
AMONG
THE NEW MEXICO ENVIRONMENT DEPARTMENT,
THE UNITED STATES DEPARTMENT OF ENERGY,
THE UNIVERSITY OF CALIFORNIA,
CONCERNED CITIZENS FOR NUCLEAR SAFETY,
NUCLEAR WATCH OF NEW MEXICO,
PEACE ACTION NEW MEXICO,
LORETTO COMMUNITY, TEWA WOMEN UNITED,
EMBUDO VALLEY ENVIRONMENTAL MONITORING GROUP,
AND
NEW MEXICO ENVIRONMENTAL LAW CENTER

This Settlement Agreement ("Agreement") is entered by and among the New Mexico Environment Department ("NMED"); the United States Department of Energy ("DOE") and the University of California ("University") (collectively referred to as "Applicants"); and Concerned Citizens for Nuclear Safety, Nuclear Watch of New Mexico, Loretto Community, Peace Action New Mexico, Tewa Women United, Embudo Valley Environmental Monitoring Group, and New Mexico Environmental Law Center (collectively referred to as "Interested Parties"), for the purpose of resolving specific disputes concerning the proposed Air Quality Permit No. 2195-N, issued by the New Mexico Environment Department Air Quality Bureau for the Chemistry and Metallurgy Research Replacement Building ("CMRR") Project at Los Alamos National Laboratory ("LANL").

DECLARATIONS

Whereas, the Applicants applied for a New Source Review (NSR) Air Quality Permit pursuant to 20.2.72.200 NMAC on March 1, 2005 for the construction of the CMRR Project;

Whereas, after application review and requests for additional information, NMED issued draft NSR Air Quality Permit No. 2195-N to the Applicants on June 10, 2005;

Whereas, pursuant to 20.2.72.206 NMAC, NMED issued a public notice and notified the Interested Parties that the pending application and draft permit were available for review and comment by the general public;

Whereas, the Interested Parties and the Applicants provided written comments and stated specific objections to NMED pertaining to the draft NSR Air Quality Permit No. 2195-N and NMED proposed to hold a hearing on the draft permit;

Whereas, the Parties to this Agreement have met to discuss the draft NSR Air Quality Permit No. 2195-N and objections to the draft permit, and negotiated resolution of those objections in good faith;

Now therefore, in consideration of the foregoing declarations and the following terms, conditions, and covenants to be kept, honored, and performed by NMED, the Applicants, and the Interested Parties, each of them agrees as follows:

I. AUTHORITY AND SETTLEMENT TERMS

A. AUTHORITY

1. **The Parties.** NMED is an executive agency of the State of New Mexico ("State"). DOE is an executive agency of the United States. The University is a contractor of DOE and operator of LANL. The Interested Parties are citizen groups and non-profit organizations with the authority to enter into legally binding agreements.

2. **The Facility.** The proposed CMRR Project is planned to be constructed at Technical Area 55 within LANL boundaries and on DOE land. The proposed CMRR Project will replace the existing Chemistry and Metallurgy Research Building at LANL. Pursuant to 20.2.72.200 NMAC, the Applicants are required to obtain an NSR air quality permit from NMED prior to commencement of construction of the CMRR Project.

B. SETTLEMENT TERMS

3. **Permit Application Revision.** The Applicants shall submit a letter within one business day of the effective date of this Agreement to NMED, with copies to the Interested Parties, revising the application submitted on March 1, 2005, limiting the application to only Phase A and B of the CMRR Project. Phase A and B of the CMRR Project include construction of the Radiological Laboratory and Office Building, and a Utility Building (referred to as the RLUOB). The Applicants will affirm in the letter that the March 1, 2005 application will not apply to Phase C of the CMRR Project and that they will request a revision of the construction permit from NMED prior to initiating construction of Phase C. Phase C includes construction of the Security Category I, Hazard Category 2 nuclear facility. Revision of the permit to include construction of Phase C shall be subject to the requirements of 20.2.72.200 NMAC. If for any reason the Applicants are unable to construct Phase C of the CMRR Project, the Applicants shall not incorporate any functions of Phase C that require an air quality permit into the CMRR Project for Phases A and B, without first obtaining an air quality permit for such functions.

4. **Public Comment on DOE Request for Approval from EPA under 40 CFR Part 61, Subpart H.** The Applicants shall publish a public notice and mail notification to the Interested Parties about the availability for review of the Applicant's request to the U.S. Environmental Protection Agency ("EPA") for pre-construction approval of Phase C under 40 CFR Part 61, Subpart H. The Applicants shall hold a public meeting and provide an opportunity for dialogue among the Applicants, the Interested Parties, and other members of the public, including local governments. The Applicants shall provide at least thirty (30) days for public comment and shall

respond in writing to any written comment they receive regarding the pre-construction approval request they make under 40 CFR Part 61, Subpart H to EPA. The Applicants shall submit the written public comments and the written responses to EPA with their pre-construction approval request.

5. **CMRR Project Public Meetings.** The Applicants shall publish a public notice and mail notification to the Interested Parties about public meetings to be held at least once every six (6) months to discuss the CMRR Project until physical construction of Phases A, B, and C of this Project is completed; or, if a phase is cancelled, until the completion of the physical construction and turnover to DOE of the approved and funded phases; or until otherwise agreed by the Parties. The Applicants shall provide an opportunity for both written and oral public comment at the public meetings. The CMRR Project meetings shall be single subject meetings in addition to, and will not be combined with, other public meetings the Applicants may hold, including but not limited to, the Sitewide Environmental Impact Statement for LANL (SWEIS). It is understood by all Parties that security and procurement sensitive information cannot be briefed at public meetings.

6. **Annual TAP and VOC Summary Report.** Within one business day of the effective date of this Agreement, the Applicants shall submit a written request to NMED, with copies to the Interested Parties, that NMED include a provision in the permit that the Applicants shall submit to NMED an annual report summarizing emissions of toxic air pollutants (TAPs) and volatile organic compounds (VOCs) found in 20.2.72.500 NMAC, Tables 1, 2, A and B from the CMRR Project Phases A and B.

7. **Public Hearings on Permit No. 2195-N.** The Applicants and the Interested Parties agree that no public hearing is necessary regarding NSR Air Quality Permit No. 2195-N and further agree not to request a public hearing regarding NSR Air Quality Permit No. 2195-N for Phases A and B of the CMRR Project under 20.2.72.206 (B) (2) NMAC, or any other provision of the New Mexico Environmental Improvement Act or Air Quality Control Act or regulations. The Applicants , and the Interested Parties also agree not to appeal the final NSR Air Quality Permit for Phases A and B under 20.2.72.207 NMAC to the Environmental Improvement Board or to the New Mexico Court of Appeals. This Agreement does not preclude the Applicants or the Interested Parties from requesting a public hearing concerning or appealing revisions to the NSR Air Quality Permit authorizing Phase C of the CMRR Project.

8. **Costs**. NMED, the Applicants, and the Interested Parties each shall be responsible for its own costs of performance under this Agreement, except as otherwise provided in the Agreement.

II. JURISDICTION AND REMEDIES

A. JURISDICTION

9. **Jurisdiction.** The parties agree that the laws of the State of New Mexico shall govern any disputes arising under this Agreement and disputes arising under this agreement will be filed in a court of appropriate jurisdiction.

10. **Enforcement.** Should any Party determine that there has been a violation or deficiency in the actions of the other Parties under this Agreement including attachments to this Agreement, that Party will notify the other parties in writing of the violation or deficiency and propose a plan to correct the violation or deficiency. If the other Party fails to respond or fails to cooperate in correcting the violation or deficiency within twenty (20) days of receipt of the complaint, the complaining Party may seek enforcement of this Agreement in court.

11. **Enforcement of Certain Provisions of Agreement.** The Parties agree that enforcement of the public comment on the Applicants' request for approval from EPA under 40 CFR Part 61, Subpart H (paragraph 4 of this Agreement) and the CMRR Project Public Meetings (paragraph 5 of this Agreement) are not part of NMED's air quality permitting process for the proposed CMRR Project. The Parties agree that no Party shall hold NMED liable for enforcement of and the Parties agree to release NMED from all liability associated with the provisions found in paragraphs 4 and 5 of this in the Agreement.

B. REMEDIES

12. **Remedies.** Subject the terms of this Agreement, any Party to this Agreement may seek any equitable or other legal relief available under applicable laws, including attorney's fees and costs that a court awards to a prevailing Party in a legal proceeding that arises under the terms of this Agreement. NMED reserves the right to pursue any relief authorized by applicable statutes and regulations and reserves the right to enforce the permit and this Agreement by administrative or judicial action, which decision shall be in its sole discretion. NMED agrees that it shall not enforce paragraphs 4 and 5 of the Agreement administratively.

III. OTHER TERMS AND CONDITIONS

13. **Legal effect.** Unless otherwise stated in this Agreement, nothing in this Agreement will be construed to restrict any parties' authority to fulfill their responsibilities or assert rights under any federal or state statute or regulation. This Agreement shall be binding on the parties and their officers, directors, employees, agents, subsidiaries, successors, assigns, trustees, or receivers.

14. **Effective date.** This Agreement shall become effective upon execution by NMED, the Applicants and all of the Interested Parties.

15. **Authority of Signatories.** Each undersigned representative of a Party to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of the Agreement and to execute and legally bind such Party to this document.

16. **Duration.** This Agreement shall continue in effect until construction of Phase C of the CMRR Building is completed; or if Phase C is cancelled, until the completion of physical construction and turnover to DOE of the approved and funded phases; and shall then terminate. The Applicants will provide notice to NMED and the Interested Parties by certified mail of such termination.

17. **Amendment.** This Agreement may not be amended, modified, or altered except by written agreement executed by all Parties to the Agreement.

18. **Force Majeure.** Force majeure shall not apply to this settlement agreement.

19. **Notice.** Notices provided pursuant to this Agreement shall be deemed to have been given when delivered by electronic mail, facsimile, or deposited in the United States mail, postage prepaid, at the addresses listed below, unless the Party in question notifies the other Parties of a different address in writing.

U. S. Department of Energy
CMRR Federal Project Director
Los Alamos Site Office
528 35th Street
Los Alamos, NM 87544
Phone: 505-665-5534
Fax: 505-667-1039
Email: sfong@doeal.gov

Loretto Community
113 Camino Santiago
Santa Fe, NM 87501
Phone: 505-983-1251
Fax: no fax
Email: pmsl@cnsp.com

New Mexico Environment Department
Air Quality Bureau
2048 Galisteo
Santa Fe, NM 87505
Phone: 505-827-1494
Fax: 505- 827-1523
Email: Richard.Goodyear@state.nm.us

NM Environmental Law Center
1405 Luisa Street, Suite 5
Santa Fe, NM 87505
Phone: 505-989-9022
Fax: 505-989-3769
Email: dmeiklejohn@nmelc.org

CCNS
107 Cienega St.
Santa Fe, NM 87501
Phone: 505-986-1973
Fax: 505-986-0997
Email: ccns@nuclearactive.org

Peace Action New Mexico
226 Fiesta Street
Santa Fe, NM 87501
Phone: (505) 989-4812
Fax: 505-989-4812
Email: peaceactionnm@aol.com

Nuclear Watch of New Mexico
551 W. Cordova Road, #808
Santa Fe, New Mexico 87505
Phone: (505) 989-7342
Fax: (505) 989-7352
Email: jcoghlan@nukewatch.org

Tewa Women United
RR5, Box 442T
Santa Fe, NM 87506
Phone: (505) 747-3259
Fax: (505) 747-4067
Email: tewawum@msn.com

Embudo Valley Environmental Monitoring Group
P.O. Box 291
Dixon, NM 87527
Phone: 505-579-4076
Fax: no fax

Email: serit@cybermesa.com

University of California
Los Alamos National Laboratory
Group Leader, Meteorology and Air Quality Group
Post Office Box 1663, MS J978
Los Alamos, NM 87545
Phone: (505) 665-8855
Fax: (505) 665-8858
Email: davef@lanl.gov

20. **Delay or Omission.** No delay or omission in the exercise of any right or duty under this Agreement shall impair such right or duty nor shall it be construed as a waiver of or acquiescence to a breach or default of this Agreement. No Party shall construe the conduct, delays, or omissions of another as altering in any way its own agreements as set forth in this Agreement. Any waiver, allowance, or approval of any claimed breach or default under this Agreement must be in writing and no Party shall raise unwritten waiver or estoppel as affirmative defenses to such claimed breach or default.

21. **Cooperation.** NMED, the Applicants and the Interested Parties shall cooperate fully with each other and act reasonably and in good faith and in a timely manner in all activities under this Agreement so that each of them may obtain the benefits contemplated under this Agreement and for which they have negotiated. No Party shall unreasonably deny, withhold, or delay any consent or approval required or contemplated for any action or transaction proposed to be taken or made in this Agreement. NMED, the Applicants, and the Interested Parties shall consult with and assist each other in good faith and without delay as to all matters that require their cooperation.

22. **Assignment and Subcontracting.** No Party to this Agreement shall assign or transfer any interest or responsibility under this Agreement without prior written approval by all Parties; provided that the University may assign its rights and obligations under this Agreement to its successor as contractor for DOE and operator of LANL. In addition, no Party to this Agreement shall subcontract any portion of the services to be performed under this Agreement without prior written approval of all Parties.

23. **Obligation**. The obligations of the Parties to this Agreement are not affected by the actions of others who are not Parties to this Agreement.

24. **Headings.** The section headings and subheadings of this Agreements are used only for convenience of reference and are not intended and shall not be construed to modify, define, limit, or expand the intent of NMED, the Applicants, or the Interested Parties in this Agreement.

25. **Severability.** If any provision of this Agreement is held invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

26. **Delivery of Written Requests.** If the Applicants fail to deliver the written requests described in paragraphs 3 and 6 of this Agreement to the NMED within one business day after the date when the NMED notifies the Applicants that the last party has signed the Agreement, all Parties are released from their obligations under this Agreement.

27. **Integration.** This Agreement incorporates all the agreements, covenants and understandings between the Parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written Agreement. No prior agreement or understanding, oral or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this Agreement.

28. **Facsimile Copies.** Signed copies of this Agreement that are sent by facsimile transmission to the Parties to this Agreement shall be treated as originals.

_____ Date 9/14/05
Secretary, New Mexico Environment Department

_____ Date _____
_____, U.S. Department of Energy

_____ Date _____
_____, University of California

_____ Date _____
Concerned Citizens for Nuclear Safety

_____ Date _____
Nuclear Watch of New Mexico

_____ Date _____
Peace Action New Mexico

_____ Date _____
Loretto Community

_____ Date_____

Tewa Women United

_____ Date_____

Embudo Valley Environmental Monitoring Group

_____ Date_____

New Mexico Environmental Law Center

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_____ Date_____
Secretary, New Mexico Environment Department

_____ Date_____
_____, U.S. Department of Energy

Carolyn Manning Date September 15, 2005
Lab Assoc Director University of California

_____ Date_____
Concerned Citizens for Nuclear Safety

_____ Date_____
Nuclear Watch of New Mexico

_____ Date_____
Peace Action New Mexico

_____ Date_____
Loretto Community

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_____ Date_____
Secretary, New Mexico Environment Department

_____ Date 9/14/05
Assistant Manager for Environmental Stewardship
Los Alamos Site Office
U.S. Department of Energy

_____ Date_____
University of California

_____ Date_____
Concerned Citizens for Nuclear Safety

_____ Date_____
Nuclear Watch of New Mexico

_____ Date_____
Peace Action New Mexico

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Secretary, New Mexico Environment Department — Date 9/14/05

U.S. Department of Energy — Date

University of California — Date

Concerned Citizens for Nuclear Safety — Date 9.15.05

Nuclear Watch of New Mexico — Date 9/15/05

Peace Action New Mexico — Date 9/15/05

Loretto Community — Date 9/15/05

Kathleen M. Sanchez
Tewa Women United

Date 9/15/05

Embudo Valley Environmental Monitoring Group

Date

Douglas Meiklejohn
New Mexico Environmental Law Center

Date 9/15/05

Date _____

Tewa Women United

Date September 15, 2005

Embudo Valley Environmental Monitoring Group

Date _____

New Mexico Environmental Law Center