

DEPARTMENT OF ENERGY
NATIONAL NUCLEAR SECURITY ADMINISTRATION

PERPETUAL PUBLIC UTILITY EASEMENT
AND TEMPORARY CONSTRUCTION EASEMENTS

PROJECT: Los Alamos County Waterline Installation Project

The **UNITED STATES OF AMERICA**, acting by and through the **DEPARTMENT OF ENERGY/NATIONAL NUCLEAR SECURITY ADMINISTRATION (DOE/NNSA)**, known as the “**Grantor**,” having determined that the granting of this instrument on the terms and conditions herein stated is not incompatible with the public interest, hereby grants to the Incorporated County of Los Alamos, New Mexico, its successors and assigns, designated as the “**Grantee**”:

1. A perpetual public utility easement (public utility easement) for right-of-way across Government-owned facilities, together with ingress and egress, for the purpose of construction, installation, operation, maintenance, and/or repair, and/or replacement of an underground waterline that connects the new Otowi Booster Station No.1, to be constructed on County property, to the existing Otowi Booster Station #2, and a temporary construction easement for the installation of the waterline. The new waterline will be installed using open trenching plus horizontal directional drilling beneath the cliff face along Highway 502. This perpetual easement contains 3.1991 acres, more or less, as shown on Attachment A, which is made part of this Easement Agreement.

2. Two temporary construction easements over, under, in, along, across and upon the property described on the attached and incorporated Attachments B and C for use in the initial construction and installation of the improvements and other construction purposes reasonably related to the initial construction of the improvements. Attachment B describes a wider temporary easement along the path of the perpetual easement, and contains 5.3319 acres, more or less. Attachment C describes a construction laydown area, and contains .8762 acres more or less.

THESE EASEMENTS are granted subject to the following terms and conditions:

1. TERM/TERMINATION RIGHTS

Perpetual Public Utility Easement. The Public Utility Easement shall be effective upon execution by DOE/NNSA, and shall be granted for an indefinite term in perpetuity, from the effective date of this Easement. This Easement may be terminated by written notice from Grantor to the Grantee (i) should a national emergency be declared by the President of the United States or Congress impacting Los Alamos National Laboratory, (ii) for non-use for a continuous twenty-four (24) month period, or (iii) abandonment.

Temporary Construction Easement. The Temporary Construction Easement shall commence on the effective date of this Agreement and shall automatically terminate and expire 14 months after the date construction of the waterline is completed. The Grantee shall submit plans and specifications for the waterline to the Grantor for examination and approval for adherence with the terms of the easement before beginning installation, and shall comply with the approved plans. Upon the expiration of the term of the Temporary Construction Easement, all of the rights and benefits of Grantee in, to and under this Agreement, with respect to the Temporary Construction Easement only, shall automatically terminate and be of no further force and effect.

2. CONSIDERATION

This Easement is made in the best interest of DOE/NNSA and provides a benefit to DOE/NNSA and the general public; therefore, consideration has been waived.

3. AUTHORIZED REPRESENTATIVES

The Grantor's representative shall be the Realty Officer, Office of Infrastructure & Capital Planning, NNSA Albuquerque Complex, SC-4, PO Box 5400, Albuquerque, NM 87185-5400; telephone (505) 845-4252. The Grantee's representative shall be the Utility Manager, or designee, 1000 Central Avenue, Suite 130, Los Alamos, New Mexico, 87544; telephone (505) 663-3420.

Any changes in the designated representatives or in their respective addresses shall be given in writing to the other.

4. NOTICE

No notice, order, direction, determination, requirement, consent, or approval under this Easement shall be of any effect, within the restriction of this Easement, unless provided in writing to the authorized representative at the address set out in Condition 3.

5. PROVISIONS OF EASEMENT GRANTED

The installation and/or operation and maintenance of the facilities shall be accomplished without cost or expense to the Grantor under the general supervision and subject to the approval of the representative having immediate jurisdiction over the property, designated as the Grantor's "local representative." The said work shall be accomplished in such a manner as not to conflict with the rights of the Grantor or any other existing utilities already present, nor to endanger personnel or property of the Grantor on Government-owned land.

6. PROTECTION OF PROPERTY

All portions of the facilities shall at all times be protected and maintained in good order and condition by and at the sole expense of the Grantee. Any property of the Grantor damaged or destroyed by the Grantee incident to the use and occupation of the premises shall be promptly repaired or replaced by the Grantee to the satisfaction of the Grantor or

in lieu of such repair or replacement the Grantee shall, if so agreed to by the Grantee and Grantor, pay to the Grantor money in an amount a reasonable amount sufficient to compensate for the loss sustained by the Grantor by reason of damages to or destruction of the Grantor's property.

7. TRANSFER/ASSIGNMENTS

The conditions of this easement shall extend to and be binding upon and shall inure to the heirs, representatives, successors, and assigns of the Grantee. The Grantee shall neither transfer nor assign this Easement or any property on the premises, nor sublet the premises or any part of the property, nor grant any interest, privilege, or license whatsoever in connection with this Easement without the express and prior written permission of the Grantor.

8. OFFICIALS NOT TO BENEFIT

No member of or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this Easement or to any benefit arising from it. However, nothing contained within this Easement shall be construed to extend to any incorporated company if the Easement be for the corporation's general benefit.

9. NON-DISCRIMINATION

Usage of the premises or facilities will be operated in a nondiscriminatory manner to the end that no person shall, on the ground of race, color, religion, sex, age, handicap, or national origin, be excluded from using the premises or facilities under the Easement.

10. COVENANT AGAINST CONTINGENT FEES

The Grantee warrants that no person or selling agency has been employed or retained to solicit or secure this Easement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Grantee for the purpose of securing business. For breach or violation of this warranty the Grantor shall have the right to annul this Easement without liability or, in its discretion, to require the Grantee to pay the full amount of such commission, percentage, brokerage, or contingent fee. (Licensed Real Estate agents or brokers having listings on property for rent, in accordance with general business practices and who have not obtained such licenses for the sole purpose of effecting this Easement, may be considered as bona fide employees or agencies with the exception contained in this Condition).

11. ENVIRONMENT

The Grantee shall not unlawfully pollute the air, ground or water or create a public nuisance. The Grantee shall use all reasonable means available to protect the environment and natural resources from damage arising from this Easement or activities incident to it and, where damage nonetheless occurs, the Grantee shall be liable to repair the damaged resources. The Grantee shall not create, use, store, treat, or dispose of any toxic or hazardous material on the premises

without prior Grantor written approval which shall not be unreasonably withheld. For the purpose of this Condition, hazardous materials shall include but not be limited to substances defined as “hazardous substances” or “toxic substances” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9061 et seq.; Hazardous Materials Transport Act, 49 U.S.C. Sec. 1802; and Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq. and in the regulations adopted and publications promulgated pursuant to said laws. The Grantee shall at no cost to the Government promptly comply with present and future Federal, State, and local laws, ordinances, regulations, or instructions controlling the quality of the environment. This does not affect the Grantee’s right to contest their validity or enjoin their applicability. The Grantee shall not be responsible for hazardous materials or pollution caused by others including the Grantor. If the Grantee discovers contamination on the premises, the Grantee shall immediately cease all activities and notify the Grantor’s representative.

The Grantee shall have no liability or responsibility and the Grantor shall retain liability (including liability to third parties) and responsibilities for environmental remediation, impacts, claims, liabilities or damages arising under any laws, regulations or permits caused by or resulting from any generation, manufacture, presence, release, discharge, use, storage, handling, or disposal of any hazardous material on or from any part of the premises or from on any part of the Grantor’s property regardless of when the condition is discovered, except to the extent caused by Grantee.

12. CULTURAL ITEMS

The Grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural, or other cultural artifacts, relics, vestiges, remains or objects of antiquity. In the event such items are discovered on the premises, the Grantee shall immediately notify the Grantor’s representative and protect the site and the material from further disturbance until the Grantor gives clearance to proceed.

13. LAWS, ORDINANCES, REGULATIONS

Grantee shall comply with all applicable laws, ordinances, and regulations of the State, county and municipality wherein the premises are located with regard to construction, sanitation, licenses or permits to do business, and all other matters affecting the premises. Grantor agrees that the Grantee is subject to laws of the Incorporated County of Los Alamos and State of New Mexico, as applicable, and such laws shall govern.

14. GRANTEE RESPONSIBILITY

The Grantee shall supervise the facilities and cause them to be inspected at reasonable intervals and shall use reasonable efforts to immediately repair any damage found as a result of the inspection or when requested by the Grantor’s representative to repair any defects. Upon completion of the installation of the facility and/or the repairs, the Grantee, at the Grantee’s own expense shall remove construction debris, revegetate for erosion control and grade to the original contour of the land. Grantee shall comply with such rules and regulations regarding Government security, ingress, egress, safety, sanitation, etc. as may be prescribed from time to time by the Grantor.

15. GRANTOR RESERVATIONS

The Grantor reserves to itself the right to construct, use, and maintain across, over and/or under the right-of-way granted any necessary electric transmission, telephone, telegraph, water, gas, gasoline, oil, sewer lines, and other facilities in such manner as not to create any unreasonable interference with the use of the right-of-way granted within this Easement.

16. THIRD-PARTY RESERVATIONS

This Easement is granted subject to such other rights that may be outstanding to third-parties in, on, over, and/or across the Easement area.

17. HOLD HARMLESS AND INDEMNITY

- a. The Grantor shall not be responsible for damages or property or injuries to persons which may arise from or be incident to the use and occupation of the Premises nor shall it be responsible for damages to the property or injuries to the persons of the Grantee, its agents, employees, or representative or others who may be on the Premises at their invitation, arising from Grantee activities.
- b. The Grantor shall be solely responsible for the claims or damages arising from injury to persons or property caused by the action of the Grantor, its employees, agents, or contractors during its activities on the Premises or arising from any neglect or fault of the Grantor or the agents and the employees of the Grantor in using the Premises, or arising from the failure of the Grantor to comply and conform with all Federal and State Laws.
- c. The Grantee agrees that to the extent authorized by the New Mexico Tort Claims Act, Section 41-4-1 through 41-4-27 NMSA 1978, the Grantee will be responsible for related claims and damages arising from injury to persons or property caused solely by the actions of the Grantee, its employees, agents, or contractors during its operation on the Premises. Grantor recognizes that the New Mexico Tort Claims Act, Sections 41-4-1 through 41-4-27 NMSA 1978, prohibits Grantee from indemnifying Grantor.
- d. The Grantee does not assume any liability or responsibility for environmental remediation, impacts and damage caused by the Grantor's use of toxic or hazardous waste, substances or materials on any portion of the Premises. Grantee has no obligation under this Easement to undertake the defense of any such claim or action, whether in existence now or brought in the future, alleging environmental impacts and damage arising out of the use of or release of any toxic or hazardous waste, substance, or materials caused by Grantor. The Grantor shall retain liability for damages for exposure and responsibility for remediation which is caused by or arises from the presence of any hazardous waste in, on or

under the Premises on or prior to time Grantee first began operations on the property.

18. BOUNDARY OR SURVEY MONUMENTATION

The Grantee shall not disturb, obliterate or destroy any land boundary or survey monument on the premises without prior approval from the Grantor's representative.

19. WETLANDS AND FLOODPLAINS

All activity within any flood plain or jurisdictional wetlands must comply with applicable Federal, State and local laws, rules or ordinances governing land use in floodplains or wetlands.

20. GRANTEE'S PLANS AND SPECIFICATIONS

The Grantee shall submit final plans and specifications of proposed construction, including horizontal directional drilling plans, to the Grantor's local representative and obtain his/her approval prior to commencement of construction.

21. TIMBER

After the initial construction and installation of the facilities, the Grantee shall notify and obtain written approval from the Grantor prior to cutting any additional trees of a eight (8) inch diameter, four (4) feet in height within the right-of-way on the premise. The Grantee will remove and dispose of any trees that it cuts on the premise.

22. REMOVAL/RELOCATION OF FACILITIES

In the event all or any portion of the premises occupied by the facilities shall be needed by the Grantor pursuant to Section 1 above, the Grantee shall remove the facilities and appurtenant improvements, upon notice to do so, to such other location (s) on the premises as may be reasonably designated by the Grantor. In the event the facilities shall not be removed or relocated within ninety (90) days after the Grantor's notice, the Grantor may cause the same to be done at the expense of the Grantee, provided in lieu of taking such action, the Grantee may wholly remove its facilities from the lands of the Grantor. In this event, the easement rights set out within this document shall cease but the restoration obligation set out in Condition 24 shall remain.

23. RESTORATION

Upon expiration or termination of the Public Utility Easement pursuant to Section 1 above, the Grantee shall, without expense to the Grantor and within such time as the Grantor may reasonably indicate, abandon or remove the facilities from the premises and restore the premises to a condition reasonably satisfactory to the Grantor. In the event the Grantee shall fail, neglect, or refuse to abandon or remove the facilities and restore the premises, the Grantor shall have the option either to take over the facilities as the property of the Grantor, without compensation therefore, or to remove the facilities and

perform the restoration work at the expense of the Grantee, and in no event shall the Grantee have any claim for damages against the Grantor or its officers or agents on account of the taking over of the facilities or on account of its abandonment or removal.

24. GRANTEE PERFORMANCE

The failure of the Grantor to insist in any one or more instances upon strict performance of any of the terms, covenants, or conditions of this Easement shall not be construed as a waiver or relinquishment of the Grantor's right to the future performance of any such terms, covenants, or conditions and the Grantee's obligations with respect to any such future performance shall continue in full force and effect.

25. GRANTOR'S LIMITATIONS TO GRANT

It is understood that this instrument is effective only insofar as the rights of the Grantor in the premises are concerned and that the Grantee shall obtain such permission as may be necessary on account of any other existing rights.

26. AMENDMENT

This Easement may not be amended or superseded except by an agreement in writing executed by the Grantor and Grantee.

IN WITNESS WHEREOF, all parties accept the terms and conditions of this Easement and cause this Easement to be signed on their behalf by their duly authorized representatives.

GRANTEE:

By: _____

Title: _____

Date: _____

GRANTOR: Department of Energy/NNSA

By: _____

Title: Certified Realty Specialist
NNSA Realty Officer

Date: _____