

**COOPERATIVE AGREEMENT BETWEEN
THE NEW MEXICO ENVIRONMENT DEPARTMENT
AND THE PUEBLO OF LAGUNA**

This Cooperative Agreement ("Agreement") is entered into by and between the New Mexico Environment Department ("NMED") and the Pueblo of Laguna ("Pueblo"), through its Environmental Department ("Department"), to provide joint exercise of regulatory authority for underground storage tanks ("USTs") at the Laguna Mart and adjacent source properties and cooperation regarding remediation of potential non-UST pollutant releases at adjacent source properties.

RECITALS

Whereas NMED is the executive agency of the State of New Mexico ("State") charged with environmental management through various programs including without limitation developing, maintaining, and enforcing regulations governing installation, operation, and closure of USTs within the State and reimbursing eligible UST owners and operators from the State Corrective Action Fund for approved investigation and remediation costs for UST releases; and

Whereas the Pueblo of Laguna ("Pueblo") is a federally recognized Pueblo Indian tribe located within New Mexico with sovereign governmental authority over, among other things, installation, operation, and closure of USTs and remediation of pollutant releases within the jurisdiction of the Pueblo; and

Whereas the Department is the agency of the Pueblo charged with environmental management within the jurisdiction of the Pueblo; and

Whereas within the Laguna Indian Reservation are located certain USTs owned and operated by the Laguna Pueblo Mart, Inc. ("Laguna Mart"), a private non-Indian business which has UST releases that will require extensive monitoring, remediation, and closure; and

Whereas preliminary monitoring of the UST releases at the Laguna Mart has indicated that there may be additional sources of hydrocarbon releases at properties adjacent to the Laguna Mart property ("adjacent source properties"), and that such releases may have commingled with the UST releases from the Laguna Mart; and

Whereas the close proximity between the jurisdictions of NMED and the Department makes it likely that releases of pollutants in either jurisdiction will affect the other, and NMED and the Department desire to work in harmony to protect from contamination and restore the soil, surface and groundwater of the State and of the Pueblo; and

Whereas NMED possesses technical expertise in environmental management of USTs and remediation of pollutants, and the Pueblo desires the assistance of NMED in developing the Department's capacity regarding those matters through cooperative efforts concerning UST regulation at the Laguna Mart and adjacent source properties and remediation of potential non-UST

pollutant releases at adjacent source properties; and

Whereas NMED believes it has sufficient staff and resources to provide assistance to the Pueblo in developing the regulatory capacity of the Department, and NMED wishes to collaborate with the Pueblo and the Department for effective regulation of USTs and remediation of pollutant releases at the Laguna Mart and adjacent source properties;

Now therefore in consideration of the foregoing recitals and the following terms, conditions, and covenants to be kept, honored, and performed by NMED and the Pueblo, through the Department, each of them agrees as follows:

I. PURPOSES AND AUTHORITY

A. Purposes.

1. **Generally.** This Agreement serves to protect from contamination and restore the soil, surface and groundwater of the State and of the Pueblo regarding releases of petroleum products and to establish a government-to-government relationship between NMED and the Pueblo, through the Department, by establishing a cooperative regulatory mechanism between NMED and the Pueblo, through the Department, for regulation and corrective action regarding any and all UST sites at the Laguna Mart and adjacent source properties, and by establishing a cooperative relationship regarding remediation of any non-UST pollutant releases at adjacent source properties.

2. **Administration and enforcement.** This Agreement establishes joint administration and enforcement by NMED and the Department of UST requirements at the Laguna Mart and adjacent source properties including without limitation, inspection, investigation, operation, permitting, corrective action, and reimbursement as set out in the New Mexico Hazardous Waste Act, NMSA 1978 §§ 74-4-1 to -14 (1993); the New Mexico Groundwater Protection Act, NMSA 1978 §§ 74-6B-1 to -14 (1993 and 1998); the New Mexico UST Regulations, 20 NMAC 5; the federal Resource Conservation and Recovery Act, Subtitle I, 42 U.S.C. §§ 6991-6991i, and regulations promulgated thereunder; and all future and successor laws and regulations of the State, the Pueblo, and the federal government concerning UST regulation.

B. Authority. NMED is authorized to enter into this Agreement by the New Mexico Environmental Improvement Act, NMSA 1978 §§ 74-1-1 to -10, in fulfillment of its regulatory authority under the New Mexico Hazardous Waste and Groundwater Protection Acts. The Pueblo, through the Department, is authorized to enter into this Agreement by Pueblo of Laguna Tribal Council Resolution No. 15-00 (May 2, 2000).

II. SPECIFIC RESPONSIBILITIES

A. Collaboration and training.

1. Laguna UST Coordinator.

a. Assignment. At all times that this Agreement is in effect, the Pueblo, through the Department, shall assign a UST Coordinator to NMED for purposes of this Agreement. The Laguna UST Coordinator may be a member of the Department's own staff or the staff of the All Indian Pueblo Council's Pueblo Office of Environmental Protection ("POEP"). In either case, the Laguna UST Coordinator may also be assigned by the Pueblo or POEP to other environmental, natural resource management, or other administrative duties.

b. Training. The Laguna UST Coordinator assigned under the preceding subsection of this Agreement shall be qualified with an appropriate technical background or experience and, at a minimum, attend annually a cumulative total of at least ten hours in workshops, seminars, conferences, and/or other formal training sessions offered or recommended by the U.S. Environmental Protection Agency or NMED regarding UST regulation, installation, operation, removal, corrective action, and/or Corrective Action Fund reimbursement.

2. NMED UST Coordinator.

a. Assignment. At all times that this Agreement is in effect, NMED shall assign a UST Coordinator from its UST Bureau in Santa Fe to serve as UST Coordinator to the Pueblo and the Department for purposes of this Agreement.

b. Training. At all times that this Agreement is in effect, NMED's UST Coordinator assigned under this Agreement shall: (i) be qualified with an appropriate technical background or experience and, at a minimum, attend annually a cumulative total of at least ten hours in workshops, seminars, conferences, and/or other formal training sessions regarding UST regulation, installation, operation, removal, corrective action, and/or Corrective Action Fund reimbursement; (ii) notify the Laguna UST Coordinator regarding information, and training opportunities and/or education materials regarding USTs; and (iii) serve as the Department's primary resource at NMED for interpreting and resolving UST issues affecting the Laguna Mart and adjacent source properties.

B. Administration and enforcement.

1. **Access.** The Pueblo shall allow the Laguna and NMED UST Coordinators joint access to the Laguna Mart and adjacent properties during normal business hours for inspections, evaluations, and observations as required by other provisions of this Section II.B.

2. **Inspections.** The Laguna and NMED UST Coordinators shall jointly visit the Laguna Mart and adjacent properties to determine UST regulatory compliance regarding all UST sites subject to this Agreement, including without limitation, whether the owner and operator for any active USTs are in compliance with applicable registration, release prevention and detection, operational and release investigation, and clean-up requirements set forth in 20 NMAC 5 and 40 C.F.R. § 282.81 or 40 C.F.R. Part 280, as applicable.

3. **Evaluations and actions.** The Laguna and NMED UST Coordinators shall jointly determine appropriate administrative and judicial enforcement actions concerning UST regulatory violations at the Laguna Mart and adjacent source properties. When enforcement action is determined to be appropriate, the UST Coordinators shall jointly initiate such proceedings pursuant to Section IV of this Agreement, and each UST Coordinator shall provide testimony in such proceedings when requested.

4. **Installation and closure observations.** The Laguna and NMED UST Coordinators shall jointly observe UST installations, modifications, repairs and closures at the Laguna Mart and adjacent source properties, if any.

5. **Non-UST Releases.** If the Laguna and NMED UST Coordinators jointly determine that any pollutant releases at adjacent source properties come from sources other than USTs, the Pueblo shall, to the greatest extent practicable, require remediation of such releases to be performed contemporaneously with, in coordination with, and in a manner at least as stringent as, corrective action regarding any and all UST releases at the Laguna Mart and adjacent source properties. In such situation, NMED shall share its expertise and fully cooperate with the Pueblo regarding remediation of such releases.

III. REIMBURSEMENT FROM CORRECTIVE ACTION FUND

The owners and operators of UST sites located at the Laguna Mart and adjacent source properties shall be eligible under NMSA 1978 §§ 74-6B-8 (1993) and -13 (1998) to apply to NMED for and receive from the Corrective Action Fund reimbursement for eligible costs of approved corrective actions, including investigation, monitoring, and remediation, under the same terms and conditions as owners and operators of USTs located within the State's jurisdiction, consistent with Section IV of this Agreement, and provided that the following conditions are satisfied:

A. Payment into Fund. NMED has determined that the owner or operator of the relevant UST site has paid all fees required by NMSA 1978 §§ 74-4-4.4, 74-6B-9 and 7-13A-1 et seq.

B. NMED's Compliance Determination. NMED has issued a written compliance determination that the owner or operator of the relevant UST site is eligible to use the Corrective Action Fund pursuant to 20 NMAC 5.17.

C. Use of Corrective Action Fund. The owner or operator of the relevant UST site satisfies the requirements of 20 NMAC 5.17 and provides any required information jointly to the NMED and Laguna Pueblo UST Coordinators.

D. General Requirements. The owner or operator of the relevant UST site complies with the general requirements of 20 NMAC 5.

E. Access. The owner or operator of the relevant UST site allows Laguna and NMED UST Coordinators joint access within normal business hours for inspections, evaluations, and observations as provided in Section II.B of this Agreement.

IV. JURISDICTION

A. Joint administration. While this Agreement is in effect, NMED and the Department shall jointly authorize all administrative actions and notices regarding UST regulation at the Laguna Mart and adjacent source properties in accordance with 20 NMAC 5, so long as those regulations are at least as stringent as corresponding federal regulations, as promulgated at 40 C.F.R. Part 280.

B. Joint enforcement. While this Agreement is in effect, NMED and the Department shall jointly pursue enforcement actions for violations of federal, tribal, or state laws and/or regulations concerning UST sites at the Laguna Mart and adjacent source properties through such administrative and/or judicial proceedings as authorized by law and mutually agreed to in advance by NMED and the Department, including without limitation notices of violation and compliance orders, and civil enforcement actions seeking civil penalties and injunctive relief.

C. Legal effect. This Agreement is not intended and shall not be deemed to change any existing governmental jurisdiction of the State or the Pueblo or any of their agencies. This Agreement is not intended and shall not be deemed to be a concession by the State or the Pueblo as to the other's legal claims, an admission of the same, or a waiver of the right to challenge such claims at any time. This Agreement shall not serve as precedent for resolution of any dispute regarding the jurisdictional authority of the State or the Pueblo, and neither this Agreement nor the activities of NMED and the Department under this Agreement shall be construed to affect the equitable or legal claims of the State or the Pueblo in any present or future litigation or other negotiation or agreement concerning the jurisdiction of the State or the Pueblo.

V. FUNDING

Except for eligible reimbursements from the Corrective Action Fund, which shall be NMED's sole obligation, NMED and the Pueblo each shall be responsible for their own costs of performance under this Agreement. No property or equipment shall be acquired jointly under this Agreement, and there shall be no disposition, division, or distribution of any property or equipment upon termination of this Agreement. Any property or equipment purchased or reimbursed in the course of corrective action at the Laguna Mart or adjacent source properties shall remain the property of the party making that purchase or reimbursement. Nothing in this Agreement shall obligate NMED or the Pueblo to expend funds in excess of those authorized and available to them for the purposes set out herein.

VI. OTHER TERMS AND CONDITIONS

A. Effective date. This Agreement shall become effective upon execution on behalf of NMED and the Department and approval by the Governor of the Pueblo.

B. Term. This Agreement shall continue in effect until completion of the corrective action contemplated by this Agreement regarding the Laguna Mart and adjacent source properties, and shall remain in effect thereafter until terminated or superseded by amendment which explicitly replaces this Agreement.

C. Termination. After expiration of the term provided in Section VI.B of this Agreement, either NMED or the Pueblo may terminate this Agreement without cause by giving at least thirty days written notice to the other.

D. Amendment. This Agreement may not be amended, modified, or altered except by written amendment executed by NMED and the Department and approved by the Governor of the Pueblo.

E. Notice. Notices provided pursuant to this Agreement shall be deemed to have been given when delivered by facsimile or deposited in the United States mail, postage prepaid, and addressed to the assigned UST Coordinator at the address below unless the party in question notifies the other of a different address in writing.

Environmental Department
Pueblo of Laguna
P.O. Box 194
Old Laguna, NM 87026
phone: 505-552-7534
fax: 505-552-6941

New Mexico Environment Department
Harold Runnels Building, Room N2153
1190 St. Francis Drive
Santa Fe, NM 87502
phone: 505-827-2910
fax: 505-827-0310

Copies of all notices provided to the Laguna UST Coordinator shall also be provided contemporaneously to the Governor of the Pueblo via the same P.O. Box or facsimile number.

F. 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. Neither NMED nor the Pueblo, through the Department, may construe the conduct, delays, or omissions of the other 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 neither NMED nor the Pueblo may raise unwritten waiver or estoppel as affirmative defenses to such claimed breach or default.

G. Cooperation. NMED and the Pueblo, through the Department, shall cooperate fully with each other and act reasonably and in good faith and in a timely manner in all activities hereunder so that each of them may obtain the benefits contemplated hereunder and for which they have negotiated. Neither NMED nor the Pueblo, through the Department, shall unreasonably deny, withhold, or delay any consent or approval required or contemplated for any action or transaction proposed to be taken or made herein. NMED and the Pueblo, through the Department, shall consult with and assist each other in good faith and without delay as to all matters which require their cooperation.

H. Dispute Resolution. All disputes under this Agreement shall be resolved, if possible, through mutual cooperation between NMED and the Pueblo, provided that where such resolution is not possible, this Agreement may be terminated pursuant to Section VI.C of this Agreement. No action may be taken in any court to enforce this Agreement against NMED, the State, the Department, or the Pueblo.

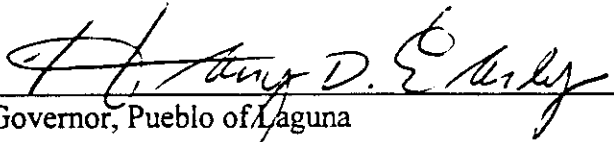
I. Sovereign immunity. This Agreement is not intended and shall not be construed to waive in any way the sovereign immunity of the State, the Pueblo, or any of their agencies or instrumentalities.

J. Headings. The section headings and subheadings of this Agreement 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 or the Pueblo, through the Department, in this Agreement.

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

L. Integration. This Agreement constitutes the complete, exclusive, and final agreement between NMED and the Pueblo, through the Department, concerning the subject matter hereof, and there is no agreement or promise by either party to do or omit to do any act or thing not mentioned herein.

IN WITNESS WHEREOF NMED and the Pueblo, through the Department, have caused this Agreement to be executed and approved.


Governor, Pueblo of Laguna Date: 6/21/00


Director, Laguna Environment Department Date: 6/21/00


Secretary, New Mexico Environment Department Date: 6/21/00