



DEPARTMENT OF THE NAVY  
OFFICE OF NAVAL RESEARCH  
875 NORTH RANDOLPH STREET  
SUITE 1425  
ARLINGTON, VA 22203-1995

Agreement Date: September 20, 2010  
Supersedes Agreement Dated July 9, 2010

## NEGOTIATION AGREEMENT

INSTITUTION: NEW MEXICO INSTITUTE OF MINING & TECHNOLOGY  
SOCORRO, NEW MEXICO 87801

The Facilities and Administrative (F&A) cost rates contained herein are for use on grants, contracts and/or other agreements issued or awarded to the New Mexico Institute of Mining & Technology (NM Tech) by all Federal Agencies of the United States of America, in accordance with the provisions and cost principles mandated by the 2 CFR 220. These rates shall be used for forward pricing and billing purposes for the NM Tech Fiscal Year 2011. This rate agreement supersedes all previous rate agreements or determinations for FY 2011.

### Section I: RATES - TYPE: FIXED WITH CARRY-FORWARD PROVISIONS (Fixed)

Type	From	To	Rate	Base	Applicable To	Location
<u>Main Campus:</u>						
Fixed	7/1/10	6/30/11	43.7%	(a)	Organized Research	On Campus
Fixed	7/1/10	6/30/11	24.1%	(a)	Organized Research	Off Campus
Fixed	7/1/10	6/30/11	38.6%	(a)	Other Sponsored Activities	On Campus
Fixed	7/1/10	6/30/11	14.9%	(a)	Other Sponsored Activities	Off Campus
<u>Energetic Materials Research Testing Center (EMRTC):</u>						
Fixed	7/1/10	6/30/11	35.0%	(a)	Organized Research (1)/(2)	On Campus
Fixed	7/1/10	6/30/11	14.1%	(a)	Organized Research (1)/(2)	Off Campus
Fixed	7/1/10	6/30/11	15.1%	(a)	Other Sponsored Activities	On Campus
Fixed	7/1/10	6/30/11	14.6%	(a)	Other Sponsored Activities	Off Campus

### DISTRIBUTION BASES

(a) Modified Total Direct Cost (MTDC), as defined in 2 CFR 220, consists of all salaries and wages, fringe benefits, materials and supplies, services, travel and subgrants and subcontracts up to the first \$25,000 each subgrant or subcontract (regardless of the period covered by the subgrant or subcontract). Equipment, capital expenditures, charges for patient care and tuition remission, rental costs, scholarships, and fellowships as well as the portion of each subgrant and subcontract in excess of \$25,000 shall be excluded.

APPLICABLE TO:

(1) Applies to DOD contracts awarded before November 30, 1993, all Non-DOD Instruments, and all DOD grants (See Section II, paragraph F). (Capped)

(2) Applies to only DOD contracts awarded on or after November 30, 1993 in accordance with and under the authority of DFARS 231.303(1) (See Section II, paragraph F). (Uncapped)

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**SECTION II - GENERAL TERMS AND CONDITIONS**

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**A. LIMITATIONS:** Use of the rates set forth under Section I is subject to any statutory or administrative limitations and is applicable to a given grant, contract or other agreement only to the extent that funds are available and consistent with any and all limitations of cost clauses or provisions, if any, contained therein. Acceptance of any or all of the rates agreed to herein is predicated upon all the following conditions: (1) that no costs other than those incurred by the grantee/contractor were included in its indirect cost pool as finally accepted and that all such costs are legal obligations of the grantee/contractor and allowable under governing cost principles; (2) that the same costs that have been treated as indirect costs are not claimed as direct costs; (3) that similar types of costs, in like circumstances, have been accorded consistent accounting treatment; (4) that the information provided by the contractor/grantee, which was used as the basis for the acceptance of the rates agreed to herein and expressly relied upon by the Government in negotiating the said rates, is not subsequently found to be materially incomplete or inaccurate and (5) the information provided by the contractor/grantee, which was used as the basis for the acceptance of building depreciation cost in the rates agreed to herein and expressly relied upon by the Government in negotiating the said rates, is not subsequently found to be materially incomplete or inaccurate.

**B. ACCOUNTING CHANGES:** The rates contained in Section I of this agreement are based on the accounting system in effect at the time this agreement was negotiated. Changes to the method(s) of accounting for costs, which affects the amount of reimbursement resulting from the use of these rates, require the written approval of the authorized representative of the cognizant negotiating agency for the Government prior to implementation of any such changes. Such changes include but are not limited to changes in the charging of a particular type of cost from indirect to direct. Failure to obtain such approval may result in subsequent cost disallowances.

**C. FIXED RATES WITH CARRY-FORWARD PROVISIONS:** The fixed rates contained in this agreement are based on estimates of the costs for FY 2011. When actual costs for this fiscal year are determined, adjustments will be applied to the next subsequent rate negotiation to recognize the difference between the FY 2011 estimated costs used to establish the fixed rates and the negotiated actual FY 2011 costs.

**D. Carry Forward Amounts:** The below carry-forward amounts were included in the establishment of the FY 2011 rates. This represents full and complete liquidation of the remaining FY 2006 final carry-forward amounts. *Note: ( ) represents over-recovery*

	Balance of FY06 Final CFW*	Balance of FY07 Est CFW	Balance of FY08 Est CFW	Estimated FY09 CFW
<b><u>Main Campus</u></b>				
Org. Research - On Campus	\$0	\$0	\$0	\$791,000
Org. Research - Off Campus	\$0	\$0	\$0	\$39,500
OSA - On Campus	\$26,452	\$806	\$171,271	\$109,200
OSA - Off Campus	\$0	\$0	\$0	\$228,000
<b><u>EMRTC</u></b>				
Org. Research - On Campus	\$0	\$0	\$0	\$137,000
Org. Research - Off Campus	\$0	\$0	\$0	\$3,000
OSA - On Campus	\$0	\$0	\$0	\$191,000
OSA - Off Campus	\$0	\$0	\$0	\$198,000

**E. USE BY OTHER FEDERAL AGENCIES:** The rates set forth in Section I hereof were negotiated in accordance with and under the authority set forth in 2 CFR 220. Accordingly, such rates shall be applied to the extent provided in such regulations to grants, contracts and other transactions to which 2 CFR 220 is applicable, subject to any limitations in part A of this section. Copies of this document may be provided by either party to other Federal agencies which have or intend to issue or award grants and contracts using these rates or to otherwise provide such agencies with documentary notice of this agreement and its terms and conditions.

**F. APPLICATION OF INDIRECT COST RATES TO DOD CONTRACTS/  
SUBCONTRACTS:** Signature of this agreement by the authorized representatives of NM Tech and the Government, acknowledges and affirms the institution's request for waiver of the prohibition contained in DFARS 231.303(1) and the Government's exercise of its discretion under DFARS 231.303(2) to waive the prohibition in DFARS 231.303(1) for all rates except the EMRTC Organized Research rates. The waiver request by NM Tech is made to simplify the institute's overall management of DOD cost reimbursements under DOD contracts.

**G. SPECIAL REMARKS:**

1. The rates included in Section I are not intended to be applied to Intergovernmental Personnel Act (IPA) costs. If NM Tech elects to seek reimbursement of F&A costs associated with IPA agreements, then the NM Tech and the Office of Naval Research shall establish special a F&A rate for IPA agreements in accordance with the provisions of 2 CFR 220.

2. NM Tech uses off-campus rates on projects for which ninety (90%) or more of the expense will be incurred at a location which is beyond the area maintained by components of the operations maintenance organizational units and costs.

3. The Government's agreement with the rates set forth in Section I is not an acceptance of NM Tech's accounting practices or methodologies. Any reliance by the Government on cost data or methodologies submitted by NM Tech is on a non-precedence-setting basis and does not imply Government acceptance.

Accepted:

FOR NEW MEXICO INSTITUTE OF  
MINING & TECHNOLOGY:

By:   
Lonnie Marquez  
Vice President for Administration  
& Finance

Date: 9-22-10

FOR THE U.S. GOVERNMENT:

By:   
Linda B. Shipp  
Contracting Officer

Date: 9-24-10

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*For information concerning this agreement contact:* Linda Shipp, ([Linda.shipp@navy.mil](mailto:Linda.shipp@navy.mil)), (703) 696-8559  
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