



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

IN REPLY REFER TO:

Agreement Date: June 12, 2018

**NEGOTIATION AGREEMENT**

**INSTITUTION: NEW MEXICO STATE UNIVERSITY  
 LAS CRUCES, NM 88003-8001**

The Facilities and Administrative (F&A) cost and Fringe Benefit rates contained herein are for use on grants, contracts and/or other agreements issued or awarded to New Mexico State University by all Federal Agencies of the United States of America, in accordance with the cost principles mandated by 2 CFR Part 200. These rates shall be used for forward pricing and billing purposes for the New Mexico State University's Fiscal Years 2019 through 2020 for the predetermined rates and FY2019 for the fixed rates. This rate agreement supersedes all previous rate agreements/determinations for Fiscal Years 2019 through 2020.

**Section I: RATES - TYPE: PREDETERMINED (PRED)  
 FIXED (FIXED)**

**F&A Rates:**

<u>Type</u>	<u>From</u>	<u>To</u>	<u>Rate</u>	<u>Base</u>	<u>Applicable To</u>	<u>Location</u>
Pred	07/01/18	06/30/20	48.00%	(a)	Instruction	On Campus
Pred	07/01/18	06/30/20	41.00%	(a)	Agriculture Research	On Campus
Pred	07/01/18	06/30/20	26.00%	(a)	Agriculture Research	Off Campus
Pred	07/01/18	06/30/20	48.00%	(a)	Organized Research	On Campus
Pred	07/01/18	06/30/20	25.65%	(a)	Organized Research	Off Campus
Pred	07/01/18	06/30/20	48.00%	(a)	Campus Branch	On Campus
Pred	07/01/18	06/30/20	33.90%	(a)	Other Sponsored Activities	On Campus
Pred	07/01/18	06/30/20	26.00%	(a)	Other Sponsored Activities	Off Campus
Fixed	07/01/18	06/30/19		(a)	PSL Organized Research (1)	On Campus
Fixed	07/01/18	06/30/19		(a)	PSL Organized Research (1)	Off Campus
Fixed	07/01/18	06/30/19		(a)	PSL Organized Research (2)	On Campus
Fixed	07/01/18	06/30/19		(a)	PSL Organized Research (2)	Off Campus

**Fringe Benefit Rates:**

<u>Type</u>	<u>From</u>	<u>To</u>	<u>Rate</u>	<u>Base</u>	<u>Applicable To</u>	<u>Location</u>
Fixed	07/01/18	06/30/19	36.50%	(b)	Regular Employees	Main Campus
Fixed	07/01/18	06/30/19		(b)	Regular Employees	PSL <sup>1</sup>
Fixed	07/01/18	06/30/19	20.33%	(b)	Non-Regular Employees	All
Fixed	07/01/18	06/30/19	1.06%	(b)	Student Employees	All
Fixed	07/01/18	06/30/19	1.11%	(b)	Graduate Assistant	All
Fixed	07/01/18	06/30/19		(c)	PSL Leave	PSL

<sup>1</sup>Physical Sciences Laboratory

DISTRIBUTION BASES

- (a) Modified Total Direct Costs (MTDC), as defined in 2 CFR Part 200, consisting of all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and subawards up to the first \$25,000 of each subaward (regardless of the period covered by the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of \$25,000.
- (b) Direct staff salaries and wages (including overtime expense, straight or premium) and employee leave benefits.
- (c) Direct staff salaries and wages (including overtime expense, straight or premium).

APPLICABLE TO

- (1) Applies to DOD contracts awarded before November 30, 1993, all Non-DOD Instruments, and all DOD grants (See Section II, paragraph G). (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 G). (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 of the following conditions: (1) that no costs other than those incurred by the recipient/contractor were included in its indirect cost pool as finally accepted and that such costs are legal obligations of the recipient/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; and (4) that the information provided by the recipient/contractor, which was used as the basis for the acceptance of the rates agreed to herein and expressly relied upon by the Government in negotiating and accepting 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. PREDETERMINED RATES:** The predetermined rates contained in this agreement are not subject to adjustment in accordance with the provisions of 2 CFR Part 200, subject to the limitations contained in Part A of this section.

**D. FIXED RATES WITH CARRY-FORWARD PROVISIONS:** The fixed rates in this agreement are based on estimates of the costs for FY2019. When actual costs for this fiscal year are determined, adjustments will be applied to a subsequent rate negotiation to recognize the difference between the FY2019 estimated costs used to establish the fixed rates and the negotiated actual FY2019 costs.

**E. CARRY FORWARD AMOUNTS:** The following carry-forward amounts were considered in the establishment of the above fixed rates:

Rate	FY14 Final	FY15 Estimate	FY16 Estimate	FY17 Estimate
<b>F&amp;A</b>				
PSL Research On Campus Capped				
PSL Research Off Campus Capped				
PSL Research On Campus Uncapped				
PSL Research Off Campus Uncapped				
<b>Fringe Benefit</b>				
Main Campus Regular Employees	\$0	\$500,000	\$500,000	\$0
PSL Regular Employees				
Non-regular Employees	\$0	\$19,670	\$0	\$1,333
Student Employees	\$0	\$0	\$784	\$7,503
Graduate Assistant Employees	\$0	\$13,314	\$0	\$11,226
PSL Leave				

**F. 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 Part 200. Accordingly, such rates shall be applied to the extent provided in such regulation to grants, contracts and other agreements to which 2 CFR Part 200 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 to provide such agencies with documentary notice of this agreement and its terms and conditions.

**G. APPLICATION OF INDIRECT COST RATES TO DOD CONTRACTS/ SUBCONTRACTS:** In accordance with DFARS 231.303, for New Mexico State University's PSL Organized Research Rate, no limitation (unless waived by the institution) may be placed on the reimbursement of otherwise allowable indirect costs incurred by an institution of higher education under a DOD contract awarded on or after November 30, 1993, unless the same limitation is applied uniformly to all other organizations performing similar work. It has been determined by the Department of Defense that such limitation is not being uniformly applied. Accordingly, the rates cited (2) of Section I, as explained under the title, "APPLICABLE TO" do not reflect the application of the limitation on administrative indirect costs imposed by 2 CFR Part 200, whereas (1) does so.

**H. DFARS WAIVER:** Signature of this agreement by the authorized representative of New Mexico State University and the Government acknowledges and affirms the University's request to waive the prohibition contained in DFARS 231.303(1) and the Government's exercise of its discretion contained in DFARS 231.303(2) to waive the prohibition in DFARS 231.303(1) with the exception of the PSL Organized Research Rate. The waiver request by New Mexico State University is made to simplify the University's overall management of DOD cost reimbursements under DOD contracts.

**I. SPECIAL REMARKS:** The Government's agreement with the rates set forth in Section I is not an acceptance of New Mexico State University's accounting practices or methodologies. Any reliance by the Government on cost data or methodologies submitted by New Mexico State University is on a non-precedence-setting basis and does not imply Government acceptance.

Accepted:

FOR NEW MEXICO STATE UNIVERSITY:

  
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Andrew J. Burke  
Senior V.P. for Administration & Finance

6.14.18  
\_\_\_\_\_  
Date

FOR THE U.S GOVERNMENT:

  
\_\_\_\_\_  
Betty J. Tingle  
Contracting Officer

6-14-18  
\_\_\_\_\_  
Date

*For information concerning this Agreement contact:*

Betty Tingle, Contract Specialist  
Office of Naval Research

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