



**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 28, 2022

**NEGOTIATION AGREEMENT**

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

The Facilities and Administrative (F&A) Cost and Fringe Benefits 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 provisions and 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 2023 and 2024. This rate agreement supersedes all previous rate agreements/determinations related to these rates for Fiscal Years 2023 and 2024.

**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	07/01/22	06/30/24	49.00%	(a)	Instruction (1)	On Campus
Pred	07/01/22	06/30/24	43.50%	(a)	Agriculture Research (1)	On Campus
Pred	07/01/22	06/30/24	26.00%	(a)	Agriculture Research (1)	Off Campus
Pred	07/01/22	06/30/24	49.00%	(a)	Organized Research (1)	On Campus
Pred	07/01/22	06/30/24	26.00%	(a)	Organized Research (1)	Off Campus
Pred	07/01/22	06/30/24	49.00%	(a)	Campus Branch (1)	On Campus
Pred	07/01/22	06/30/24	32.60%	(a)	Other Sponsored Activities (1)	On Campus
Pred	07/01/22	06/30/24	26.00%	(a)	Other Sponsored Activities (1)	Off Campus
Fixed	07/01/22	06/30/23		(a)	PSL Organized Research (1)	On Campus
Fixed	07/01/22	06/30/23		(a)	PSL Organized Research (1)	Off Campus
Fixed	07/01/22	06/30/23		(a)	PSL Organized Research (2)	On Campus
Fixed	07/01/22	06/30/23		(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	07/01/22	06/30/23	37.50%	(b)	Regular Employees	Main Campus
Fixed	07/01/22	06/30/23		(b)	Regular Employees	PSL <sup>1</sup>
Fixed	07/01/22	06/30/23	22.50%	(b)	Non-Regular Employees	All
Fixed	07/01/22	06/30/23	0.59%	(b)	Student Employees	All
Fixed	07/01/22	06/30/23	0.58%	(b)	Graduate Assistant	All
Fixed	07/01/22	06/30/23		(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 and other agreements (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)

---

**SECTION II - GENERAL TERMS AND CONDITIONS**

---

A. **LIMITATIONS:** Use of the rates set forth under Section I is subject to availability of funds and to any other statutory or administrative limitations. The rates are 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 the following conditions: (1) that no costs other than those incurred by the institution were included in this indirect cost pool as finally accepted and that such costs are legal obligations of the institution 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 have been accorded consistent accounting treatment; and (4) that the information provided by the institution which was used as a basis for 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 the agreement was negotiated. Changes to the method(s) of accounting for costs, which affect the amount of reimbursement resulting from the use of these rates require the prior written approval of the authorized representative of the cognizant agency for indirect costs. 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 contained in this agreement are based on estimates of the costs for FY 2023. When actual costs for this fiscal year are determined, adjustments will be applied to a rate negotiation for a subsequent fiscal year to recognize the difference between the FY 2023 estimated costs used to establish the fixed rates and the negotiated actual FY 2023 costs.

**E. CARRY FORWARD AMOUNTS:** The following carry-forward amounts were included in the establishment of the FY 2023 rates:

Rate	FY18 Estimate	FY19 Estimate	FY21 Estimate
<b>F&amp;A</b>			
PSL Research On Campus Capped	\$ 174,539	\$ 1,340	
PSL Research Off Campus Capped			
PSL Research On Campus Uncapped	\$ 411,110	\$40,470	
PSL Research Off Campus Uncapped		\$97,580	
<b>Fringe Benefit</b>			
Main Campus Regular Employees	\$1,006,152		\$(839,562)
PSL Regular Employees			\$ (42,794)
Non-regular Employees		\$16,167	\$ (57,000)
Student Employees			\$ (9,657)
Graduate Assistant Employees			\$ (21,152)
PSL Leave			\$ (61,500)

( ) Denotes over-recovery

In a letter dated June 14, 2022, New Mexico State University waived its rights to the following under-recoveries:

Regular Employees Fringe Benefits FY18, \$48,091

**F. USE BY OTHER FEDERAL AGENCIES:** The rates set forth in Section I are 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 regulations to grants, contracts, and other agreements to which 2 CFR Part 200 applies, 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 DEPARTMENT OF DEFENSE (DOD) CONTRACTS:** In accordance with DFARS 231.303, no limitation may be placed on the reimbursement of otherwise allowable indirect cost 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 DoD 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 26% 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). 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:

FOR THE U.S. GOVERNMENT:

D'Anne  
Stuart

Digitally signed by  
D'Anne Stuart  
Date: 2022.06.28  
15:41:43 -06'00'

\_\_\_\_\_  
D'ANNE STUART  
Associate VP Finance and Business  
Services

6/28/2022

\_\_\_\_\_  
Date

GALES.SHARON  
.J.1093052664

Digitally signed by  
GALES.SHARON.J.1093052664  
Date: 2022.06.29 15:50:27  
-04'00'

\_\_\_\_\_  
SHARON GALES  
Contracting Officer

6/29/2022

\_\_\_\_\_  
Date

*For information concerning this agreement contact:*

Name: Sharon Gales

Phone: (571) 463-8028

Office of Naval Research

E-mail: [sharon.j.gales.civ@us.navy.mil](mailto:sharon.j.gales.civ@us.navy.mil)

875 North Randolph Street

Arlington, VA 22203-1995