

STATE OF NEW MEXICO
NEW MEXICO DEPARTMENT OF HEALTH
SCIENTIFIC LABORATORY DIVISION
AND
COLORADO, UTAH AND ARIZONA PUBLIC HEALTH LABORATORIES

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (“Agreement”) is entered into by the State of New Mexico Department of Health (“DEPARTMENT”) and the Public Health Laboratories of Colorado, Utah and Arizona (PHL) for the purpose of establishing the terms for the provision of testing clinical specimens and environmental samples within the capabilities of each of the PHL in order to maintain their continuity of operations in the event that any of the laboratories is temporarily unable to perform such testing.

ARTICLE 1. RECITALS

- A. The DEPARTMENT is an agency of the State of New Mexico, established by and operated pursuant to state laws.
- B. The PHL consist of the state public health laboratories in the States of Colorado, Utah, and Arizona and operated pursuant to the applicable state and federal laws.
- C. The DEPARTMENT and the PHL are engaged in the testing of the clinical specimens for infectious and inherited diseases and environmental samples for hazardous compounds in accord with recommendations of the “Core Functions of Public Health Laboratories” (MMWR vol. 51, No. RR-14, September 20, 2002).
- D. The DEPARTMENT laboratory and the PHL laboratories are all essential parts of the national Laboratory Response Network and registered with the Select Agent Registry. In addition, these laboratories are the Environmental Protection Agency primacy labs for drinking water testing in their respective States. This partnership offers the DEPARTMENT and the PHL a unique opportunity to support each other in the event of a local disruption in their operations, and will provide a means by which a continuity of operations can be achieved.
- E. The DEPARTMENT and the PHL desire to collaborate in such activities so that they might support each other in the event of a local disruption in their operations, and will provide a means by which a continuity of operations can be achieved.

ARTICLE 2. TERM

This Agreement will begin January 1, 2007 and will terminate on December 30, 2009 unless earlier terminated as provided in Article 13 of this Agreement or as otherwise provided in the Scope of Work.

ARTICLE 3. SCOPE OF WORK

The Scope of Work of this Agreement is described on a project-specific basis in Article 6, as it may be amended from time to time. The parties will actively manage the activities undertaken pursuant to this Agreement and will periodically modify the terms and conditions of this Agreement to promote flexibility in responding to changing needs and circumstances and to provide maximum benefit for the parties and the citizens of the state.

ARTICLE 4. SCOPE OF AGREEMENT

- A. This Agreement incorporates all of the agreements, covenants and understandings between the parties concerning the subject matter herein. No other agreement of understanding of the parties or their agents shall be valid or enforceable unless stated in this Agreement.
- B. The DEPARTMENT and the PHL agree to comply with the terms and conditions which are set forth in this document, as it may be amended from time to time, to the extent not inconsistent with, excluded or modified by a specific provision of this Agreement.

ARTICLE 5. STATUS OF DEPARTMENT AND PHL

Nothing in this Agreement shall be deemed or construed by the parties or by any third party, as creating the relationship of principal and agent, partners, joint ventures or any other relationship between the parties.

ARTICLE 6. RESPONSIBILITIES

- A. As a CLIA- and EPA-certified facility, the DEPARTMENT and PHL have qualified for testing clinical specimens for infectious diseases of public health significance and environmental specimens for hazardous chemicals. The DEPARTMENT and PHL laboratories may seek assistance from the any of the DEPARTMENT and PHL in carrying out these analyses if:
 - 1) Local events temporarily prevent them from conducting these analyses, or
 - 2) A local event should occur requiring analyses that they are not qualified to run, or
 - 3) They are qualified to run the analysis, but require additional support from a laboratory in a surge capacity.

The support will continue until the need is no longer present or the supporting laboratory is unable to continue to offer support.

- B. The DEPARTMENT and PHL agree to:
 - 1) Report the results of the analyses to the level laboratory submitting the specimens or samples for analysis. The submitting laboratories will be responsible for notifying local entities and reporting test results to health care providers and government officials.

- 1) The DEPARTMENT or PHL laboratories that are shipping the specimens to another laboratory will have the responsibility of packing, shipping and initiating any required chain of custody forms for the clinical specimens.
- 2) The DEPARTMENT or PHL performing analyses will be compensated for the costs of analyses by the submitting state. Reimbursement will occur based upon the published fee schedule of the laboratory performing the testing. If there is a multi-state incident, FEMA will be called upon to assist with covering costs.

ARTICLE 7. ASSIGNMENT

Neither party will assign or transfer any interest in this Agreement.

ARTICLE 8. LIABILITY

- A. As between the parties, each party will be responsible for claims or damages arising from personal injury or damage to persons or tangible property to the extent they result from negligence of its' employees, subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et.seq., NMSA 1978, as amended.
- B. In the event of a breach of this Agreement by the DEPARTMENT or the PHL, the remedy will be the right to terminate this Agreement, in whole or in part, by either party without penalty of cost or expenses associated with breach.

ARTICLE 9. AMENDMENTS

No changes, amendments or alterations to this Agreement will be effective unless in writing and signed by both parties.

ARTICLE 10. APPLICABLE LAW

This Agreement will be governed by the laws of the State of New Mexico and applicable laws of the United States.

ARTICLE 11. COMPLIANCE WITH LAWS

The parties will comply with all Federal and State laws relating to provision of services under this Agreement and will maintain in effect all permits, licenses, governmental approvals and accreditations that may be necessary for that purpose. The parties will notify each other immediately of any material change in such permits, licenses, governmental approvals or accreditation that would adversely affect the ability of the parties to perform under this Agreement.

ARTICLE 12. SEVERABILITY

If any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement will remain in full force and effect.

ARTICLE 13. TERMINATION

This Agreement will be reviewed annually and continued unless terminated by either party by delivering written notice to the other party at least 30 days prior to termination.

ARTICLE 14. WAIVER OF BREACH

The waiver by either party of a breach or violation of any provision of this Agreement will not operate as, or be construed as, a waiver of any subsequent breach of this Agreement.

ARTICLE 15. FORCE MAJEURE

If either party is unable, wholly or in part, due to a natural disaster or any other extraordinary reason not within its control, to carry out its obligations under this Agreement, the party will give written notice with full particulars of the event causing disability to perform to the other party within a reasonable time after the occurrence of the relied upon cause. Thereafter, the obligations of the party giving such notice will be suspended during the continuance of any inability so caused, but for no longer period, except as may be agreed upon by the parties in writing.

ARTICLE 16. DISPUTE RESOLUTION

Any controversy or claim arising out of or relating to this Agreement or a breach of this Agreement that is not resolved in the first instance by the designees of the parties will be referred to the Secretary of the DEPARTMENT and the Dean of the School of Medicine.

ARTICLE 17. THIRD PARTIES

Nothing in this Agreement, express or implied, is intended to confer any rights, remedies, claims or interests upon a person not a party to this Agreement.

ARTICLE 18. NOTICES

Any notice to be given by this Agreement will be in writing and will be delivered in person or by electronic facsimile, courier service or U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the DEPARTMENT: New Mexico Department of Health
Scientific Laboratory Division
ATTN: Division Director
P.O. Box 4700
Albuquerque, NM 87196-4700

To the PHL: Colorado Department of Public Health and Environment
Laboratory Services Division
ATTN: Laboratory Director
8100 Lowry Blvd.
Denver, CO 80230

Utah Division of Epidemiology and Laboratory Services
ATTN: Laboratory Director
46 North Medical Drive
Salt Lake City, UT 84113

Arizona Department of Health
Bureau of Laboratory Services
ATTN: Laboratory Director
250 North 17th Ave.
Phoenix, AZ 85007

ARTICLE 19. BINDING EFFECT

This Agreement is binding upon, in inures to the benefit of the parties to this Agreement and their respective successors and assigns.

ARTICLE 20. HIPAA

The DEPARTMENT and the PHL shall comply with all applicable requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

APPROVED ON BEHALF OF THE DEPARTMENT OF HEALTH

Michelle Lujan Grisham, Secretary

Date_____

David Mills PhD, Division Director
Scientific Laboratory Division

Date_____

APPROVED FOR LEGAL SUFFICIENCY

DOH General Counsel

Date_____

APPROVED ON BEHALF OF THE COLORADO/UTAH/ARIZONA DEPARTMENTS OF HEALTH

State Lab Director, CO

Date_____

State Lab Director, UT

Date_____

State Lab Director, AZ

Date_____