



**Department of Energy**  
 West Valley Demonstration Project  
 10282 Rock Springs Road  
 West Valley, NY 14171-9799

March 30, 2021

Mr. John Rendall  
 President & General Manager  
 CH2M HILL BWXT West Valley, LLC  
 West Valley Demonstration Project  
 10282 Rock Springs Rd.  
 West Valley, NY 14171-9799

ATTENTION: D. A. Schuman, Safeguards & Security Manager, WV-PL17

SUBJECT: Memorandum of Understanding (MOU) for the Use of the Cattaraugus County Sheriff's Office (CCSO) Firearms Range

REFERENCE: Letter (378562), B. C. Bower to J.D. Bradford, "Approval for West Valley Demonstration Project (WVDP) Protective Force Rifle Acquisition," dated May 24, 2018

Dear Mr. Rendall:

The U.S. Department of Energy West Valley Demonstration Project (DOE-WVDP) and CH2M HILL BWXT West Valley, LLC (CHBWV) agree that the current live fire range facility at the WVDP does not meet required safety specifications for live fire training with assault rifles.

Modification to bring the existing range into compliance would be costly; therefore, an alternate solution to utilize an existing range outside of DOE that meets DOE safety and security requirements is the most logical course of action. The following sections of DOE Order 473.3A detail the requirements for use of non-DOE ranges.

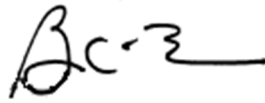
DOE Order 473.3A, Attachment 2

<b>Section J (2)</b>	<b>Section C (4)(b)</b>
b. Basic firearms training must be conducted at a site approved by the ODFSA [Officially Designated Federal Security Authority].	1. Suitable facilities to support applicable CPF [Contractor Protective Forces] activities must be provided and maintained based on mission-specific needs.
	2. Local, State, and Federal law enforcement agencies and Department of Defense/National Guard training facilities are acceptable alternatives to DOE-owned facilities, as long as required DOE certifications and safety guidelines are maintained. In coordination with the CPF contractor, a MOU delineating such use must be completed by the ODFSA and approved by DOE line management.

DOE-WVDP has entered into a MOU with the CCSO for use of their firearms range in Little Valley, NY. CHBWV will need to modify the existing DOE and West Valley Protective Force (WVPF) "Range Safety Rules" currently in use at the WVDP firearms range to incorporate the technical specifications and use of the CCSO Range. Additionally, prior to use of the CCSO Range, WVPF Firearms and Tactical Instructors are required to attend safety and operational training as provided by CCSO Range staff.

The contents of this correspondence are not intended to impact or modify contract scope and/or cost. Questions regarding this matter can be directed to Anthony J. Lechanski at Extension 2814.

Sincerely,

A handwritten signature in black ink, appearing to read "B.C. Bower". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Bryan C. Bower  
Officially Designated Federal Security Authority  
West Valley Demonstration Project

Enclosure: MOU with the CCSO

cc: K. R. Whitham, CHBWV, WV-PL17, w/enc.  
M. C. Bell, DOE-EMCBC, Office of the Director, w/enc.  
T. J. Johnson, DOE-HQ, EM-3.114, w/enc.  
J. T. Williams, DOE-HQ, EM-3.114, w/enc.  
J. M. Dundas, DOE-WVDP, AC-DOE, w/enc.  
A. J. Lechanski, DOE-WVDP, AC-DOE, w/enc.

LMS:384117 – 470.1

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
CATTARAUGUS COUNTY, ACTING BY AND THROUGH THE  
CATTARAUGUS COUNTY SHERIFF'S OFFICE (COUNTY)  
AND THE  
U.S. DEPARTMENT OF ENERGY WEST VALLEY DEMONSTRATION PROJECT  
(DOE-WVDP)**

1. **PURPOSE.** This Memorandum of Understanding (“MOU”) constitutes a professional service and/or shared-use agreement between the COUNTY and the DOE-WVDP, wherein COUNTY will make available to the DOE-WVDP and the DOE-WVDP’s contractor for protective forces (collectively referred to as “DOE-WVDP” herein), COUNTY’s firearms range (“Facility”) for firearms and related law enforcement training as described below. As used in this MOU, the term “Parties” describes COUNTY and the DOE-WVDP. This MOU is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law or otherwise by any third party against the Parties, their parent agencies, or the officers, employees, agents or other associated personnel thereof.

2. **AUTHORITIES.** Authority for the COUNTY to enter into this MOU has been granted with the passage of Act 370-2016 of the Cattaraugus County Legislature. Authority for DOE-WVDP to enter this MOU is the Department of Energy Organization Act, Public Law 95-91.

3. **USE OF FACILITIES.**

3.1 COUNTY agrees to allow the DOE-WVDP use of the Facility, which is located at 5285 Kyler Hill Road, Little Valley, New York, to conduct weapons and tactics training, together with necessary rights of ingress and egress to the Facility.

3.2 Requests for use of the Facility will be submitted via email to Sheriff Timothy S. Whitcomb (tswitcomb@cattco.org). DOE-WVDP use of the Facility shall be approved only by Sheriff Whitcomb and any unauthorized or unscheduled use of the COUNTY range shall result in the termination of this MOU.

3.3 The DOE-WVDP will use reasonable due care in its use of the Facility and shall be responsible to COUNTY for conducting all activities in a safe and prudent manner so as not to endanger others while on COUNTY property. The DOE-WVDP shall return the Facility to COUNTY after each use in the same condition as before its use, except for reasonable wear and tear, or if it cannot do so, the DOE-WVDP agrees to immediately notify COUNTY and be financially responsible to COUNTY for any necessary repairs. DOE-WVDP agrees that it will financially cover the cost of materials for replacement or repairs for any reckless or unnecessary damage caused by its activities as determined by

COUNTY. The requirement for any payments or financial responsibility in this MOU shall be subject to the availability of appropriated funds. No provision herein shall be interpreted to require the obligation of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341.

3.4 No training involving the use of chemical irritants (CN, CS, OC) will be conducted at the COUNTY range. DOE-WVDP agrees that after any firearms training is conducted by it at the Facility, all spent brass will be collected and placed in designated areas for the COUNTY. It is also the duty of the DOE-WVDP to remove all of its accumulated waste from the training facility and place it in the provided dumpster.

#### **4. RULES AND REGULATIONS.**

4.1 This MOU shall be carried out in compliance with all applicable laws, regulations, and other legal requirements. Any provisions of this MOU found to be inconsistent with current directives or policies shall be considered invalid, but the remaining provisions shall remain in effect.

4.2 DOE-WVDP, its agents, employees, and invitees, agree to abide by all rules and regulations for both the Facility, which may now or hereafter be promulgated or adopted by COUNTY relative to regulation of activities at the Facility, or on COUNTY property. The DOE-WVDP Principal Firearms Instructor is required to sign a copy of the COUNTY safety rules as acknowledgement of the rules and agreement to abide by them. All DOE-WVDP Firearms/Tactical Instructors must attend mandatory safety and operational training prior to use of the Facility.

4.3 DOE-WVDP agrees that no activity will be conducted at the Facility or on COUNTY property by the DOE-WVDP, its agents, employees or invitees, during the term of this MOU that is in violation of the laws and regulations of the United States, the State of New York, the County of CATTARAUGUS, the Town of Little Valley, or any agencies or departments thereof, including, but not limited to environmental laws.

4.4 Violations of any the agreed upon rules and regulations, or any above stated laws, or any damage (negligent or otherwise) could result in DOE-WVDP being charged to pay for said damages at the discretion of COUNTY and will result in termination of this MOU for DOE-WVDP, resulting in the loss of Facility usage for DOE-WVDP.

#### **5. SUPERVISION/ACKNOWLEDGEMENT OF RISK.**

5.1 All persons being trained by the DOE-WVDP, or at the Facility at the request or invitation of the DOE-WVDP, will be at all times under direct supervision of authorized DOE-WVDP instructors.

5.2 The DOE-WVDP is responsible for ensuring that all personnel using the Facility, while it is assigned to or otherwise being used by the DOE-WVDP, understand and agree that use of the Facility is an inherently dangerous activity and that in consideration for being allowed to use the Facility, each

individual assumes the risk of any injuries that may occur while using the Facility. Further, the DOE-WVDP is responsible for ensuring that said individuals release COUNTY from any liability for injuries occurring on COUNTY property, to the extent allowable by law.

**6. CLAIMS ADJUDICATION.**

6.1 DOE-WVDP agrees to promptly consider and adjudicate any and all claims which may arise out of this MOU resulting from the actions of DOE-WVDP, duly authorized representatives, or contractors of DOE-WVDP, and to pay for any damage or injury as may be required by Federal law. Such adjudication will be pursued under the Federal Tort Claims Act, 28 U.S.C. Section 2671 et seq., or such other legal authority as may be pertinent. DOE-WVDP also agrees to consider and adjudicate any claims for property damage or personal injury sustained by Government personnel in the performance of their official duties while on the COUNTY'S property. Such adjudication will be pursuant to the Federal Tort Claims Act, the Federal Employee's Compensation Act, 5 U.S.C. Section 8101 et seq., or such other legal authority as may be pertinent.

6.2 COUNTY disclaims any and all liability for damage to any property owned by DOE-WVDP, including any vehicles (personally or agency owned) that are brought to the Facility, especially inside the fenced area of the Facility, except where caused by the sole negligence or willful misconduct of the COUNTY.

6.3 COUNTY expressly disclaims any and all liability for damage or injury to DOE-WVDP, its agents, employees and invitees related to this MOU. COUNTY shall not be liable for theft, vandalism or pilferage of the Facility or any items contained therein, except where caused by the sole negligence or willful misconduct of the COUNTY.

**7. TERM, AMENDMENT, TERMINATION, AND NOTICE.**

7.1 This MOU becomes effective upon the later date of execution by DOE-WVDP or COUNTY and will remain in effect thereafter, with the MOU being reviewed and amended as needed by the Parties.

7.2 Either Party may terminate this MOU upon thirty (30) days written notification to the other Party. Such notice will be the subject of immediate consultation to the Parties to decide upon the appropriate course of action.

7.3 All notices required under the MOU shall be in writing and mailed first class, or shall be delivered by hand to the address of the Party set forth as follows, or to such other address as such Party may designate from time to time by such notice, and shall take effect when mailed or when received if delivered by hand:

**To COUNTY:** Kenneth Rice, Training Coordinator  
Cattaraugus County Sheriff's Office  
301 Court Street  
Little Valley, New York 14755  
Tel: 716-938-2697  
[kdrice@cattco.org](mailto:kdrice@cattco.org)

**With a copy to:** Ashley E. Milliman, Esq.  
303 Court Street  
Little Valley, New York 14755  
Tel: 716-938-2391  
[aemilliman@cattco.or](mailto:aemilliman@cattco.or)

**To DOE-WVDP:** Bryan Bower  
Director, West Valley Demonstration Project  
U.S. Department of Energy  
West Valley Demonstration Project  
Ashford Office Complex  
9030 US Route 219  
West Valley, NY 14171  
Tel: 716.942.4368

**With a copy to:** Audrey A. Seeley, Esq.  
Office of Chief Counsel, EMCBC  
West Valley Demonstration Project  
Ashford Office Complex  
9030 US Route 219  
West Valley, NY 14171  
Tel: 716.942.2772

**8. GOVERNING LAW.** Disagreements between the Parties arising under or relating to this MOU will be resolved by consultation between the Parties and will not be referred to a local, state, or federal court unless necessary to enforce provisions under Paragraph 6 and its subparagraphs. COUNTY Weapons / Ordinance personnel or their designees have final say on all matters pertaining to safety, usage and administration at the Facility. This supersedes any and all rank or administrative titles carried by members of guest agencies.

**9. FORCE MAJEURE.** Neither COUNTY nor the DOE-WVDP shall be deemed in default hereunder if either Party is prevented from performing any of the obligations by reason of strikes, labor disputes, acts of God, acts of the public enemy, acts of the government, sabotage, natural disasters, war, rebellion, insurrection, riot, strikes, lockout, disease epidemic, or any other circumstances for which either Party is not responsible or which are not within either Party's control.

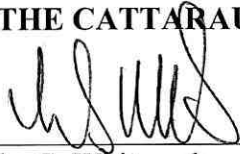
**10. FUNDING.**

10.1 At this time there is no method or plan to collect funds from guest agencies for use of the Facility. However, should the need arise in the future in order to maintain the Facility at a high standard, Parties will agree that any fees will be known and agreed to at the time of training scheduling. Any fees paid by DOE-WVDP constitute its willingness to have access to a well maintained training venue and at no point will any fees paid constitute any ownership, control or unquestioned right to future use of the Facility.

10.2 If at any time DOE-WVDP agrees to any funding then no provision of the MOU shall be interpreted as or constitute a commitment by DOE-WVDP to obligate or pay any funds in contravention of the Anti-Deficiency Act (31 USC §1341) or any other applicable federal statute.

**11. ENTIRE AGREEMENT.** This MOU constitutes the entire agreement between the Parties. This MOU supersedes any and all other agreements, verbal or written, concerning the Facility.

**FOR THE CATTARAUGUS COUNTY SHERIFF'S OFFICE**



\_\_\_\_\_  
Timothy S. Whitcomb  
CATTARAUGUS County Sheriff

Date 3/3/21



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Kenneth Rice  
Head Range Instructor

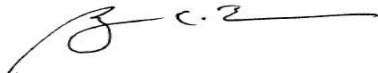
Date 3-11-21



\_\_\_\_\_  
Ashley E. Milliman, Esq.  
County Attorney

Date 3/2/21

**FOR THE U.S. Department of Energy, West Valley Demonstration Project**



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Bryan C. Bower  
Director, U.S. Department of Energy  
West Valley Demonstration Project

Date 3/18/2021