

# City of Las Cruces®

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## Council Action and Executive Summary

Item # 4Ordinance/Resolution# 13-104For Meeting of \_\_\_\_\_  
(Ordinance First Reading Date)For Meeting of January 22, 2013  
(Adoption Date)

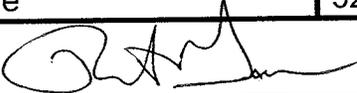
Please check box that applies to this item:

 QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

**TITLE: A RESOLUTION TO APPROVE A JOINT POWERS AGREEMENT BETWEEN THE ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT, FORESTRY DIVISION AND THE CITY OF LAS CRUCES FOR WILDLAND FIRE PROTECTION AND SUPPRESSION, AND TO RATIFY THE CITY MANAGER'S SIGNATURE ON THE JOINT POWERS AGREEMENT.**

**PURPOSE(S) OF ACTION:**

Approve the Joint Powers Agreement.

<b>COUNCIL DISTRICT: ALL</b>		
<b><u>Drafter/Staff Contact:</u></b> Russell Smith	<b><u>Department/Section:</u></b> Fire	<b><u>Phone:</u></b> 528-4068
<b><u>City Manager Signature:</u></b>		

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:**

In recognition of the threat posed by wildland fires within the City of Las Cruces and the State of New Mexico, it was deemed necessary to identify ways in which assistance would be brought into the area. Personnel from the City of Las Cruces Fire and Legal departments worked with the Forestry Division of the Energy, Minerals and Natural Resources Department (EMNRD) to outline procedures of sharing equipment and personnel for such an event.

While the threat of a wildland/urban interface fire in Las Cruces which would require assistance from EMNRD is extremely low, it does exist. As we have seen in the last several years wildland fires within the state continue to occur, and on a devastating scale. This Joint Powers Agreement would allow the City of Las Cruces to provide reimbursable assistance to EMNRD in the form of reserve apparatus and equipment. The anticipated reimbursable expenses for FY13 is \$61,320.00. This estimate is based on three weeks usage of the apparatus and equipment during the course of the wildland fire season. Any equipment deployed for use by EMNRD will not impact the response capability of the fire department.

(Continue on additional sheets as required)

**SUPPORT INFORMATION:**

1. Resolution.
2. Exhibit "A", Joint Powers Agreement between the Energy, Minerals and Natural Resources Department, Forestry Division and the City of Las Cruces, revised 07-10-12.

**SOURCE OF FUNDING:**

<b>Is this action already budgeted?</b>	Yes	<input checked="" type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from: _____
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
		<input type="checkbox"/>	Proposed funding is from fund balance in the Fund.
<b>Does this action create any revenue?</b>	Yes	<input checked="" type="checkbox"/>	Funds will be deposited into this fund: <u>10160010-592001</u> in the amount of <u>\$61,320.00</u> for <u>FY13</u> .
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

**BUDGET NARRATIVE**

Revenue generated by this Joint Powers Agreement has been estimated at \$61,320.00 for FY13 and had been included in the original budget as part of the anticipated general fund revenues. No specific expenditures are identified below as they have already been distributed as part of the initial budget process. All actual revenue generated by this agreement will be expended in accordance with budget procedures.

**FUND EXPENDITURE SUMMARY:**

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

**OPTIONS / ALTERNATIVES:**

1. Vote "Yes"; this will approve the Joint Powers Agreement and ratify the City Manager's signature on the agreement.
2. Vote "No"; this will deny the Joint Powers Agreement.
3. Vote to "Amend"; this is not an option as any changes to the Joint Powers Agreement would need to be agreed upon by both parties prior to signing.

(Continue on additional sheets as required)

4. Vote to "Table"; this could allow staff time to work with the Energy, Minerals and Natural Resources Department to develop a Joint Powers Agreement that would be acceptable to both parties.

**REFERENCE INFORMATION:**

N/A

RESOLUTION NO. 13-104

**A RESOLUTION TO APPROVE A JOINT POWERS AGREEMENT BETWEEN THE ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT, FORESTRY DIVISION AND THE CITY OF LAS CRUCES FOR WILDLAND FIRE PROTECTION AND SUPPRESSION, AND TO RATIFY THE CITY MANAGER'S SIGNATURE ON THE JOINT POWERS AGREEMENT.**

The City Council is informed that:

**WHEREAS**, municipal and non-municipal lands are intermingled or adjacent, and wildland fires on these intermingled or adjacent lands may present a threat to lands one or both of the Agencies own, administer, or control; and

**WHEREAS**, the Energy, Minerals and Natural Resources Department, Forestry Division (EMNRD) is the designated state agency responsible for coordinating wildland fire suppression services among county and municipal fire departments, cooperating state agencies, and cooperating federal agencies pursuant to NMSA 1978, §§ 68-2-6, 68-2-8, and 68-2-24; and

**WHEREAS**, EMNRD has responsibility for wildland fire suppression on non-municipal and non-federal lands within New Mexico and the City has responsibility for wildland fire suppression on lands within its municipal boundaries; and

**WHEREAS**, it is to EMNRD's and the City's mutual advantage to coordinate efforts for the prevention, readiness, detection, suppression, and response to wildland fires, in and adjacent to their areas of responsibility, to avoid duplication, and to improve efficiency or effectiveness; and

**WHEREAS**, it is EMNRD's and the City's intent that EMNRD resources be available to assist in wildland fire suppression and fire management within the City's municipal boundaries; and

**WHEREAS**, it is EMNRD's and the City's intent that the City's resources be

available to assist in the wildland fire suppression and fire management on non-municipal and non-federal lands; and

**WHEREAS**, the control of wildland/urban interface fires in any jurisdiction may require the mobilization of personnel and other resources beyond the jurisdictional capability, and supporting agency resources may need to be organized and maintained for an extended period of time; and

**WHEREAS**, EMNRD and the City are public agencies as defined in NMSA 1978, Section 11-1-2.

**NOW, THEREFORE**, Be it resolved by the governing body of the City of Las Cruces:

**(I)**

**THAT** the Joint Powers Agreement between the Energy, Minerals and Natural Resources Department, Forestry Division and the City of Las Cruces for Wildland Fire Protection and Suppression is hereby approved and adopted as written; Exhibit "A" attached hereto and made part of this resolution.

**(II)**

**THAT** the City Manager's signature on the Joint Powers Agreement is ratified.

**(III)**

**THAT** City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

**DONE AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

(SEAL)

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

VOTE:

Mayor Miyagishima: \_\_\_\_\_

Councillor Silva: \_\_\_\_\_

Councillor Smith: \_\_\_\_\_

Councillor Pedroza: \_\_\_\_\_

Councillor Small: \_\_\_\_\_

Councillor Sorg: \_\_\_\_\_

Councillor Thomas: \_\_\_\_\_

**JOINT POWERS AGREEMENT  
BETWEEN THE  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT,  
FORESTRY DIVISION  
AND THE  
CITY OF LAS CRUCES  
FOR  
WILDLAND FIRE PROTECTION AND SUPPRESSION**

**AUTHORITIES**

1. Forest Conservation Act, NMSA 1978, §§ 68-2-6, 68-2-8 and 68-2-24
2. Joint Powers Agreements Act, NMSA 1978, § 11-1-1 *et seq.*
3. Disaster Location Act, NMSA 1978, §§ 12-11-23 through 12-11-25
4. Tort Claims Act, NMSA 1978, § 41-4-1 *et seq.*
5. Municipal Code, NMSA 1978, § 3-18-11

**PURPOSE**

This Agreement is made pursuant to NMSA 1978, § 11-1-1 *et seq.* between the Energy, Minerals and Natural Resources Department, Forestry Division (EMNRD) and the City of Las Cruces (City), who may hereinafter be jointly referred to as the "Agencies".

This Agreement for Wildland Fire Protection and Suppression's (hereinafter referred to as the Agreement) purpose is to document EMNRD's and the City's agreement and commitment to mutual wildland fire suppression and management assistance and cooperation.

Words and phrases used herein may have different meanings or interpretations for different readers. In order to establish a common understanding, words and phrases as used herein are defined in Exhibit A, Glossary.

**RECITALS**

**WHEREAS**, municipal and non-municipal lands are intermingled or adjacent, and wildland fires on these intermingled or adjacent lands may present a threat to lands one or both of the Agencies own, administer, or control;

**WHEREAS**, EMNRD is the designated state agency responsible for coordinating wildland fire suppression services among county and municipal fire departments, cooperating state agencies, and cooperating federal agencies pursuant to NMSA 1978, §§ 68-2-6, 68-2-8, and 68-2-24;

**WHEREAS**, EMNRD has responsibility for wildland fire suppression on non-municipal and non-federal lands within New Mexico and the City has responsibility for wildland fire suppression on lands within its municipal boundaries;

**WHEREAS**, it is to EMNRD's and the City's mutual advantage to coordinate efforts for the prevention, readiness, detection, suppression, and response to wildland fires, in and adjacent to their areas of responsibility, to avoid duplication, and to improve efficiency or effectiveness;

**WHEREAS**, it is EMNRD's and the City's intent that EMNRD resources be available to assist in wildland fire suppression and fire management within the City's municipal boundaries;

**WHEREAS**, it is EMNRD's and the City's intent that the City's resources be available to assist in the wildland fire suppression and fire management on non-municipal and non-federal lands;

**WHEREAS**, the control of wildland/urban interface fires in any jurisdiction may require the mobilization of personnel and other resources beyond the jurisdictional capability, and supporting agency resources may need to be organized and maintained for an extended period of time; and

**WHEREAS**, EMNRD and the City are public agencies as defined in NMSA 1978, Section 11-1-2;

**THEREFORE**, in consideration of the mutual premises and conditions herein made, EMNRD and the City agree as follows:

## **PROTECTION RESPONSIBILITIES**

### **1. Definition of Responsibilities:**

- A. **Jurisdictional Agency** – The agency that has overall land and resource management or protection responsibility, as provided by state law. Under no circumstances shall a Jurisdictional Agency abdicate legal requirements as provided by state law.
- B. **Supporting Agency** - An agency providing wildland fire suppression or other support and resources to the Jurisdictional Agency.

**2. Non-Reimbursable Assistance:** Upon EMNRD's request, the City may provide firefighting resources to assist in the control of initial attack wildland fires within EMNRD's jurisdiction that are **adjacent** to the City's municipal boundaries as defined by a map in the Local Operating Plan. Upon the City's request, EMNRD may provide firefighting resources to assist in the control of initial attack wildland fires within the City's municipal boundaries. These fires are non-reimbursable and each Agency shall

bear its own costs. The Supporting Agency shall consult with the Incident Commander and the Jurisdictional Agency and notify them if the Supporting Agency determines the incident has exceeded its initial attack capability.

EMNRD and the City shall not reimburse each other for resources they do not request.

**3. Reimbursable Assistance:** EMNRD and the City may provide reimbursable assistance to each other in the following circumstances: a) for extended attack wildland fire suppression; b) initial attack fire suppression for situations that are not included in Section 2; and c) wildland fire management activities.

The Jurisdictional Agency shall only reimburse the Supporting Agency for resources requested, qualified, and mobilized following this Agreement and following the standards in the New Mexico Resource Mobilization Plan (RMP).

EMNRD and the City shall designate a local contact person or persons who have authority to mobilize resources while assuring that adequate resources are retained for their own fire suppression responsibilities. Resource requests must be recorded by the resource order or similar tracking system. Requests not documented in this manner are not reimbursable.

**4. Initial Attack Wildland Fire Exchange Areas:** EMNRD and the City may exchange responsibility for initial attack of wildland fires for lands under their jurisdiction. Exchange areas shall be mapped and the maps made part of the Local Operating Plan. Exchange areas do not have to be equivalent acres.

When the Supporting Agency provides initial attack wildland fire protection services and the incident exceeds initial attack capabilities, it shall notify the Jurisdictional Agency, which shall assume wildland fire suppression responsibility. Under this situation the Jurisdictional Agency shall bear all costs, including initial attack costs. The Jurisdictional Agency shall not be required to reimburse costs to the Supporting Agency for wildland fires that exceed initial attack capabilities if the Supporting Agency does not immediately notify the Jurisdictional Agency.

**5. Boundary Line Fires:** A boundary line wildland fire, as defined in Exhibit A, shall be both EMNRD's and the City's initial attack responsibility. Neither shall assume the other is aware of the fire or that the other Agency shall take action. Each Agency shall make every reasonable effort to communicate with the other concerning the fire and establish a unified command and designate an Incident Commander as soon as possible.

**6. Independent Action on Lands Protected by Another Agency:** Except as otherwise limited in the Local Operating Plan, nothing herein shall prohibit either EMNRD or the City, on its own initiative and without reimbursement, from going upon lands the other Agency protects to engage in wildland fire suppression, when such fires

threaten lands that are the Agency's protection responsibility. In such instances, the party taking action shall immediately notify the Jurisdictional Agency. Actions taken shall be consistent with the Jurisdictional Agency's fire management and suppression policies.

## INTERAGENCY COOPERATION AND COORDINATION

- 7. National Guard Assistance:** EMNRD may seek National Guard assistance for wildland fire emergency purposes at the state level through the State Forester to the Governor, for a Governor's Declared Emergency on multi-jurisdictional wildland fires or at the City's request for wildland fires within the City's municipal boundaries. The Incident Commander shall advise the State Forester upon the termination of the wildland fire emergency for purposes of demobilizing the National Guard. At that time the State Forester shall advise the Governor and the Adjutant General's Office of the Military Affairs Department that the fire emergency no longer exists.
- 8. Local Government Resources:** If EMNRD requests local government resources, those resources shall be considered EMNRD-provided resources. Except as provided in Sections 4 above, the City shall be responsible for the cost of local government resources order for wildland fires within its municipal boundaries.
- 9. EMNRD as Liaison for Federal Resources:** EMNRD shall act as coordinator and order federal resources for wildland fires. The City may request that EMNRD order federal resources on the City's behalf for fires within municipal boundaries. The City shall be responsible for the cost of federal resources ordered for wildland fires within municipal boundaries except as provided in Section 4 above.
- 10. Emergency Declarations:** If the cost of a wildland fire within the City's municipal boundaries exceeds the City's resources, the City may request an Emergency Declaration for financial assistance pursuant to the State Civil Emergency Preparedness Act, NMSA 1978 Section 12-10-1 *et seq.* EMNRD may provide technical assistance to the City in preparing the request
- 11. Incident Command System:** EMNRD and the City shall operate under the concepts defined in the National Interagency Incident Management System (NIIMS) or its successor and its component, the Incident Command System (ICS), as appropriate for providing qualified resources and for the management of incidents this Agreement covers.
- 12. Communication:** EMNRD and the City authorize each other to use their radio frequencies on wildland fires where they are providing assistance.
- 13. Local Operating Plan:** The Local Operating Plan shall establish and map protection areas and boundaries including those areas under EMNRD's jurisdiction that are adjacent to the City's municipal boundaries and shall outline the details of implementing this Agreement. The Local Operating Plan shall designate EMNRD and

City authorized representatives, and contact addresses and telephone numbers for resource mobilization and billing. The Local Operating Plan shall not supersede terms of this Agreement's terms and shall be consistent with this Agreement.

EMNRD and the City's authorized representatives, as specified in the Plan, shall develop a Local Operating Plan and conduct an annual review. If a review is not completed, the latest Local Operating Plan agreed upon by both parties shall remain in full force and effect.

**14. EMNRD Firefighter Qualifications, Equipment, and Personal Protective Equipment:** EMNRD firefighting personnel assigned to emergency fire suppression work shall be qualified according to the then current National Wildland Fire Qualifications Guide NWCG 310-1. Firefighting equipment and personal protective equipment shall be properly configured and equipped for wildland fire suppression operations per National Wildfire Coordination Group (NWCG) standards.

**15. Municipal Firefighter Qualifications, Equipment, and Personal Protective Equipment:**

- A. **Non-Reimbursable Assistance:** For non-reimbursable assistance under this agreement, the City's personnel qualifications, equipment, and personal protective equipment shall meet the City's standards and applicable State Fire Marshal regulations.
- B. **Reimbursable Assistance:** For all reimbursable assistance under this agreement, the City shall ensure personnel qualifications including fitness; training and experience; equipment; and personal protective equipment meet the RMP standards.

All resources EMNRD mobilizes may receive a performance rating. Any such performance rating will be submitted for review by the firefighter's municipal fire department supervisor. Any firefighter who receives a deficient performance rating shall not be considered as a qualified resource for future EMNRD incidents until re-qualified as prescribed in the RMP.

**16. Resource Mobilization Plan (RMP):** A statewide plan that establishes the following:

- A. personnel and equipment standards for the City's resources that the City may make available to EMNRD for wildland fire suppression and management;
- B. procedures by which EMNRD can request, mobilize, coordinate, and demobilize the City's resources used for wildland fire protection and management; and

- C. rates, specific procedures, and administrative methods by which EMNRD will reimburse the City for the services of qualified and requested resources. The Agencies shall annually review and, upon mutual agreement, modify the RMP rate sheet (Exhibit D); provided, however, that if such review is not completed, the latest RMP rate sheet-agreed upon by both parties shall remain in full force and effect.

**17. Law Enforcement:** The Jurisdictional Agency where the wildland fire originates shall be responsible for such law enforcement action as is deemed necessary. Agencies shall immediately take actions to try to protect and secure the area of the fire's origin or if that is not possible to gather information and evidence pertaining to the fire's cause and hold it for investigation and analysis.

### **WILDLAND FIRE SUPPRESSION**

**18. Fire Notifications:** EMNRD and the City shall immediately notify each other of wildland fires burning on or threatening lands for which the other Agency has jurisdiction.

**19. Multi-Jurisdictional Incidents:**

- A. EMNRD and the City shall establish a Unified Command and designate, in writing, an Incident Commander.
- B. The parties involved in the fire incident shall participate jointly in strategy sessions to reach mutual agreement on strategy and tactics within the Jurisdictional Agencies' policy guidelines.
- C. The Jurisdictional Agency's authorized representatives shall prepare a Cost Apportionment Agreement. See Section 29.

Failure to comply with conditions stated in A, B, and C above, are grounds for denial of payment by the Agency that was not afforded due consideration.

**20. Protection Priorities:** The protection of human life is the single, overriding suppression priority. Once firefighters have been committed to an incident, these human resources become the highest value to be protected. Setting priorities for protecting communities and community infrastructure, other property and improvements, and natural and cultural resources shall be done based on human health and safety, the values to be protected, and the protection costs.

**21. Appropriate Suppression Action Policies:** All fire suppression action shall be consistent with the Jurisdictional Agency's fire suppression policy and this Agreement's terms. The Local Operating Plan shall document procedures and criteria for the Agencies' representatives to communicate special land management considerations to Incident Commanders. Unless otherwise agreed, the Jurisdictional Agency shall

provide a Resource Advisor to advise the Supporting Agency of any special conditions that may influence suppression action. The Incident Commander shall incorporate special conditions in the incident planning process, subject to delegation of authority.

**22. Fire Reports:** On incidents where the Agency making the initial attack is not the Jurisdictional Agency, the Agency shall furnish a copy of its fire report to the Jurisdictional Agency within 30 days after the fire is declared out.

**23. Structural Fire Suppression:** Nothing in this Agreement is intended to make EMNRD responsible for structural fire suppression.

#### USE OF AND REIMBURSEMENT FOR SHARED RESOURCES

**24. Municipal Reimbursement Rates:**

- A. Reimbursement of Personnel:** When deployed under the RMP, EMNRD shall reimburse the City for career/paid firefighter employees' regular pay, including overtime, pay differentials, benefits, travel, and per diem from their mobilization until their demobilization following procedures defined in the RMP. These career/paid firefighter employees will at all times remain covered under the City's employee benefits, including workers' compensation. EMNRD shall not hire career/paid firefighter employees during the incident.
- B. Reimbursement for Equipment Use:** When deployed under the RMP, EMNRD shall reimburse the City for staffed or unstaffed equipment use, as appropriate, based on rates established in the annual RMP rate sheet (Exhibit D). When deployed under mutual aid, EMNRD shall reimburse the City for staffed equipment based on the current municipal/county wildland fire reimbursement rates as established by EMNRD for local non-RMP incidents. EMNRD shall reimburse the City for equipment use from mobilization to demobilization, as defined herein. Equipment should be returned to the City in the same condition as when received, reasonable wear and tear excepted.
- C. Reimbursement for Expendable Supplies:** For each piece of equipment, the designated equipment operator shall prepare a list of the City's expendable supplies used at an incident. The City shall submit the list to EMNRD before departure from the incident. EMNRD, at its discretion, shall reimburse at-cost or replace in-kind the City's expendable supplies. For at-cost reimbursement, the City shall invoice EMNRD for the actual replacement cost of any supplies used. The City shall fully document the cost of supplies and furnish a true copy of the vendor's invoice to EMNRD with the reimbursement billing. The City shall pass any discounts through to EMNRD.

**25. EMNRD Reimbursement Rates:** Reimbursement for EMNRD resources shall be based on employees' regular pay, including overtime, pay differentials, benefits, travel, and per diem from their mobilization until their demobilization; published equipment rates; and actual expenditures for supplies, contractors, and cooperating agencies. Federal agency and fire department rates are derived from existing agreements and plans.

**26. Indirect Rates for Overhead and Administration:** Indirect rates for overhead and administration costs shall be based on the Agencies' direct costs that are incurred pursuant to this Agreement and computed as follows:

	<u>Direct Costs</u>	<u>Indirect Rate</u>
A.	Less than or equal to \$250,000	5%
B.	Between \$250,000 and \$1,000,000	the greater of \$12,500 or 3%
C.	Greater than \$1,000,000	the greater of \$30,000 or 1%

**27. No New Capital Outlay:** No property other than reimbursable or expendable materials actually consumed during fire suppression activities shall be allowed as a result of the joint exercise of powers under this Agreement (i.e., no capital outlay for new items such as chainsaws, water pumps, generators, computers, and so forth).

**28. Procurement:** Whenever EMNRD or the City is responsible for an incident's management, they shall comply with state procurement laws.

**29. Cost Apportionment Agreement (Cost Sharing) for Multi-Jurisdictional Wildland Fires:** Suppression costs for multi-jurisdictional wildland fires shall be shared based upon each Agency's percentage of area (acreage) the fire affects. Departures from this approach may be made by mutual agreement when the result would be inequitable due to an extraordinary event or extra suppression effort required for the protection of the Jurisdictional Agency's resources.

The Agencies shall document the basis for cost apportionment, incorporate it into the cost share agreement, and provide originals of the agreement to each Agency. See Exhibit B for a sample Cost Share Agreement. The State Forester has the authority to enter into cost share agreements on EMNRD's behalf. The City's authorized representative, the City Manager, or other local official as specified in the Local Operating Plan, has the authority to enter into cost share agreements on the City's behalf.

On a wildland fire which EMNRD or the City initially attacks as a multi-jurisdictional fire, but that is later determined not to be a multi-jurisdictional fire, the Jurisdictional Agency shall pay the Supporting Agency for all fire suppression costs if the fire exceeds initial

attack.

**30. Delegation of Authority:** The Jurisdictional Agencies may be required to approve a delegation of authority to the Incident Commander. The applicable District Forester has authority to sign the delegation of authority for EMNRD. The City's authorized representative, as specified in the Local Operating Plan, has the authority to sign the City's delegation of authority.

**31. General Billing Procedures for Reimbursable Fire Assistance:**

- A. When EMNRD is the Supporting Agency, EMNRD shall bill the City. When the City is the Supporting Agency, the City shall bill EMNRD.
- B. On multi-jurisdictional incidents, EMNRD and the City shall cross bill.
- C. Billing amounts do not apply to Non-Reimbursable Assistance or Initial Attack Wildland Fire Exchange Areas as provided in Sections 2 and 4.
- D. EMNRD and the City shall share their respective individual incident resource order numbers or similar tracking method for cross-referencing purposes.

**32. Billing Estimates/Timeframes:** On wildland fires where the Billing Agency incurs costs pursuant to this Agreement, the Billing Agency shall submit an agency approved reimbursement form for reimbursement as soon as possible, but not later than 45 days after the fire is controlled.

**33. Billing Estimates/Timeframes for Incidents with Federal Emergency Management Agency (FEMA) Approved Grants:** If an incident has been approved as a Fire Management Assistance grant through FEMA, the bill for reimbursement must be submitted to the Jurisdictional Agency within 120 days from the designated incident period date as per the Federal Emergency Management Agency, Disaster Assistance; Fire Management Assistance Grant Program, 44 C.F.R. Part 204 or as amended.

**34. Notification of Unpaid Obligations:** So that EMNRD may encumber funds, the City shall submit an estimate of unpaid obligation figures to EMNRD for the state fiscal year by June 15<sup>th</sup>. So that the City may obligate funds, EMNRD shall submit an estimate of unpaid obligation figures to the City for the City's fiscal year by June 15<sup>th</sup>.

**35. Billing Content:** Bills shall be identified by funding code, fire name, location, jurisdictional unit, and appropriate order number, and shall be supported by adequate documentation including applicable Cost Share Agreements. The Agencies shall certify each bill to be true and correct.

**36. Payment Due Dates:** All bills shall have a payment due date 60 days after the date of receipt. If payment cannot be made before the 60 days expire, then the Agency

may request a 30-day extension with oral or written justification.

**37. Disputed Billings:** Written notice that a bill is contested shall be mailed to the Billing Agency within 60 days of the final bill's issuance, and shall fully explain the area of dispute. Contested items shall be resolved not later than 60 days following the written notice's receipt. The bill's uncontested portion shall be paid and a new bill shall be issued for the contested amount.

**38. Payments:** Payments shall refer to the bill number and fire name and shall be sent to the appropriate billing address as indicated in Exhibit C.

### FEDERAL EXCESS PROPERTY PROGRAM (FEPP)

**39. FEPP Equipment:** As available, EMNRD may provide such federal excess property program firefighting equipment, as it deems appropriate for use under the Federal Cooperative Assistance Program, to the City for placement with its fire department for the purpose of fire prevention and control work. FEPP equipment made available to the City must be documented in writing by EMNRD and the City's authorized representative, as specified in the Local Operating Plan.

**40. License Plates:** EMNRD shall provide official-use license plates for FEPP vehicles EMNRD makes available to the City for its fire department's use.

**41. Equipment Maintenance:** The City shall maintain the FEPP equipment EMNRD provides in good condition, reasonable wear and tear excepted, and make the equipment available to EMNRD for inspection upon reasonable request.

**42. Equipment Use:** The City shall use FEPP equipment EMNRD provides exclusively for fire purposes. Failure to comply with FEPP guidelines may result in the removal of equipment from the City's fire department.

**43. Accessories or Alteration of Equipment:** The City shall obtain EMNRD's written approval prior to adding accessories or altering any of the property provided pursuant to this Agreement. The City shall not sell, junk, or trade FEPP equipment. The City shall return FEPP equipment to EMNRD for disposition. Title to all accessories, tools, sirens, or other property that the City adds to equipment EMNRD furnishes shall remain with the City. The City may remove such property prior to the return of equipment to EMNRD, provided that removal does not materially damage the equipment.

**44. Receipt of Equipment:** The City shall transport the FEPP equipment EMNRD provides to and from locations EMNRD designates in writing, and upon the time of transfer of the equipment to the fire department, when necessary, paint and add such decals or insignias as EMNRD prescribes.

**45. FEPP Insurance Coverage:** The City is a self-insured municipality and agrees to

repair or replace equipment provided by EMNRD damaged by actions of the City or its employees. The value of the repair or replacement will be determined using standard procedure used by the Risk Management Division, New Mexico General Services Department.

**46. Licenses:** The City shall require all operators of the FEPP equipment to obtain and carry the class of New Mexico issued driver's licenses that are necessary to legally operate the equipment EMNRD provides, and maintain a current list of personnel who are licensed and authorized to operate the equipment under this Agreement's terms.

**47. Notification of Accident:** The City shall immediately (within 24 hours) notify EMNRD if the equipment EMNRD provides is involved in an accident.

### GENERAL PROVISIONS

**48. Appropriations:** Nothing in this Agreement shall be construed as obligating EMNRD or the City to expend money in excess of appropriations authorized by state or local laws. The terms of this Agreement are contingent upon sufficient appropriation and authorization being granted by the New Mexico State Legislature and the City. If sufficient appropriation or authorization is not granted, either party may terminate this Agreement, or suspend performance pending approval of sufficient appropriation or authorization, upon written notice from one to the other. Alternatively, should the Legislature or City appropriate or authorize less than the entire amount for the project to be carried out through this Agreement, the parties may agree to amend this Agreement to continue the project based upon the funds actually appropriated or authorized. Either party's decision as to whether sufficient appropriations are available shall be final, binding and accepted by the other.

**49. Mutual Sharing of Information:** EMNRD and the City shall furnish to each other, or otherwise make available upon request, such maps, documents, instructions, records, and reports including, but not limited to, fire reports, employment records, and investigation and law enforcement reports as either party considers necessary in connection with the Agreement, in accordance with applicable state and federal rules and regulations.

**50. Accident Investigations:** Whenever an accident occurs involving a Supporting Agency's equipment or personnel, the Jurisdictional Agency shall take immediate steps to notify the Supporting Agency. As soon as practical, the Jurisdictional Agency shall initiate an accident investigation. A team made up of appropriate representatives from affected agencies shall conduct the investigation.

**51. Non-Wildland Fire and Medical Aid Responses:** This Agreement is limited to wildland fire protection and does not include medical aid responses not related to or a result of a wildland fire or structural fire suppression.

**52. Previous Agreements:** This Agreement is intended to terminate and replace

the following agreement for wildland fire protection:

N/A

Where other agreements exist that conflict with this Agreement, this Agreement shall supersede all others.

**53. Suppression and Damage Collection:** Nothing in this Agreement shall preclude EMNRD or the City from collecting damages and suppression costs from third parties (civil actions for recovery shall be taken independently) under the civil liability provisions of federal or state statutes or common law in a manner applicable law provides. However, whenever such collections have the effect of reducing the Billing Agency's net expenditures, then the bill shall be reduced proportionate to the amount collected.

**54. Employment Policy:** Except as provided in Section 24, the City's employees shall not under this Agreement's terms become State of New Mexico employees. As a result of this Agreement the City, its agents, and employees shall not accrue leave, retirement, insurance, bonding, or any other benefits afforded to State of New Mexico employees. EMNRD employees shall not under this Agreement's terms become the City's employees. As a result of this Agreement EMNRD, its agents, and employees shall not accrue leave, retirement, insurance, bonding, or any other benefits afforded to the City.

**55. Workers' Compensation:** Except as provided in Section 24 for the purposes of Workers' Compensation coverage, employees of the State of New Mexico and the City are covered under the New Mexico Workers' Compensation Act, NMSA 1978, § 52-1-1 *et seq.*, while assigned to assist in suppressing wildland fires on lands within the City's municipal boundaries or within EMNRD's jurisdiction.

**56. Insurance:** Except as provided in Section 24, EMNRD and the City shall provide insurance coverage for all injury or damage to persons or property, including third parties, that occurs as a result of the Agencies' respective actions and all personnel, agents, and volunteers the Agencies' respectively entrust; provided, however, this section shall not be read nor implemented inconsistently with the Tort Claims Act. EMNRD and the City shall maintain continuous insurance coverage of the activities described in this Agreement in effect.

**57. Waiver of Claims:** EMNRD and the City shall each be responsible for errors, omission, and negligence of their employees to the extent provided under the New Mexico Tort Claims Act, NMSA 1978, 41-4-1 *et seq.*

**58. Third Party Claims:** Any liability to third parties that may arise under the performance of this Agreement shall be determined solely under the New Mexico Tort Claims Act, NMSA 1978, 41-4-1 *et seq.*

**59. Disposition, Division, or Distribution of Property; Return of Surplus Funds:**

Upon this Agreement's expiration or termination, if EMNRD or the City has property or funds in its possession belonging to the other, the same shall be returned in proportion to the Agencies' original contribution.

**60. Strict Accountability for Receipts and Disbursements:** EMNRD and the City shall be strictly accountable for receipts and disbursements relating hereto and shall make all relevant financial records available to EMNRD, DFA, the City and the New Mexico State Auditor upon request, and shall maintain all such records for three (3) years after this Agreement has expired or has been terminated. These records shall be subject to examination and audit for three (3) years after final payment.

**61. Equal Opportunity Compliance:** EMNRD and the City agree to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, both parties assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If either party is found not to be in compliance with these requirements during the life of this Agreement, that party agrees to take appropriate steps to correct these deficiencies.

**62. Performance:** Any party shall have the right to enforce this Agreement by any available remedy under the State of New Mexico's laws.

**63. Duration of Agreement:** This Agreement shall not become effective until approved by the Secretary of the New Mexico Department of Finance and Administration (DFA) and shall be ongoing unless terminated. Either EMNRD or the City may terminate participation in this Agreement by written notification to the other at least 90 days prior to the termination date. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the noticed termination date.

**64. Amendment:** This Agreement shall not be altered, changed, or amended except by instrument in writing executed by the parties hereto and approved by the DFA Secretary. This Agreement may be amended at any time by all parties' written, mutual consent.

IN WITNESS WHEREOF, the parties have herein set their hand.

STATE OF NEW MEXICO, ENERGY, MINERALS AND NATURAL RESOURCES  
DEPARTMENT

By: \_\_\_\_\_  
Cabinet Secretary or Designee

Date: \_\_\_\_\_

**CITY OF LAS CRUCES**

By: \_\_\_\_\_  
Robert Garza, P.E., City Manager

Date: \_\_\_\_\_

**STATE OF NEW MEXICO, DEPARTMENT OF FINANCE AND ADMINISTRATION**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A****GLOSSARY OF TERMS****Administrative Costs (Charges) or Indirect Rates for Overhead and**

**Administration:** Any expenses not charged directly to a program, project, or fire. They include general overhead personnel and administrative services. For EMNRD, the administrative charge is identified as those charges and expenses used to determine the "indirect rate". All activities that can be identified and charged to specific projects, and not excluded elsewhere in this Agreement, are considered direct costs and may be billed with proper documentation.

**Agencies:** The New Mexico Energy, Minerals and Natural Resources Department (EMNRD), Forestry Division, and the City of Las Cruces.

**Agency Representative:** An individual assigned to an incident with full authority to make decisions on all matters affecting that Agency's participation at the incident.

**Authorized Representative:** Agency official designated in this Agreement or in the Local Operating Plan who has authority to make decisions on matters related to this Agreement including approval of the Local Operating Plan, mobilization of resources, cost apportionment agreements, delegation of authority to the Incident Commander, Agency Representatives during incidents, and the acquisition of FEPP equipment.

**Boundary Line Fire:** This includes (i) a wildland fire burning jointly on lands of both Agencies or that shall soon burn across the boundary line and the boundary line is known, (ii) where the fire location is known, but the jurisdictional boundary on the ground is uncertain, or (iii) where the location of a reported fire is uncertain in relation to the jurisdictional boundary. Once the fire's exact location is determined in relation to the jurisdictional boundary, it ceases to be a boundary fire unless falling in category (i) above.

**Closest Forces Concept:** The philosophy of committing the closest available appropriate resources, regardless of agency, for initial attack or for critical need.

**Cost Share Agreement:** A document prepared between EMNRD and the City to distribute costs on a multi-jurisdictional incident or an incident, which threatens or burns across both Agencies' boundaries.

**Delegation of Authority:** The written transfer of authority for suppression actions from the Jurisdictional Agency to the Incident Commander.

**Direct Costs:** All costs associated with direct fireline/fire ground operations and incident support ordered by or for the incident. Excludes Overhead Costs.

**Extended Attack:** A wildland fire incident that has exceeded the initial attack resources' suppression efforts.

**Extended Attack Incident:** A wildland fire that initial attack forces have not contained or controlled and for which more firefighting resources are arriving, en route, or the initial attack incident commander is ordering. Extended attack implies that the incident's complexity level has increased beyond the initial attack incident command's capabilities.

**Fire Management:** Activities and programs that include the use of fire as a resource management tool, and protection of values from unwanted, uncontrolled wildland fire.

**Incident Command System (ICS):** The common emergency incident management system used on any incident or event and tailored to fit the incident/event's specific management needs.

**Immediate:** Acting without the intervention of another objective or cause. Occurring, acting, or accomplished without loss or interval of time.

**Initial Attack:** Preparedness and response to conduct the first wildland fire suppression actions with local resources.

**Initial Attack Wildland Fire Exchange:** When Agencies exchange responsibility for initial attack of wildland fires for lands under their jurisdiction.

**Initial Attack Forces:** Wildland fire suppression resources of agencies initially dispatched to a wildland fire in accordance with a pre-existing Local Operating Plan or mobilization guide.

**Multi-jurisdictional Incident:** A wildland fire that is burning on more than one jurisdiction's lands or that threatens to burn on to another jurisdiction within the next operational period.

**Municipal Jurisdiction:** The City's jurisdiction, for this Agreement's purposes, is defined as the area the City has incorporated. City-owned property outside the City's incorporated boundaries is the responsibility of the jurisdiction in which the property resides.

**Mutual Aid:** Local wildland fire suppression assistance provided to other government agencies. Resources are generally dispatched through the local 911 system, but may be dispatched through EMNRD.

**Overhead Costs:** Indirect administrative costs that cannot be readily identified with specifically financed programs and functions.

**Protection Area Maps:** The Local Operating Plan's official maps.

**Qualified Resources:** Those resources meeting or exceeding the minimum standards for use at an incident as prescribed in the Resource Mobilization Plan.

**Reimbursable (Assistance by Hire):** Fire suppression resources that the requesting Jurisdictional Agency shall pay for per this Agreement and the Local Operating Plan's conditions.

**Requested Resources:** Those resources the Jurisdictional Agency specifically requests from the Supporting Agency in accordance with this Agreement.

**Resources:** All personnel, equipment, and aircraft available for assignment of tasks.

**Resource Mobilization Plan (RMP):** A statewide document that describes the specific standards, methods, procedures, protocols, and rates by which resources may be deployed under this Agreement. The RMP will not supersede this Agreement's terms and shall be consistent with this Agreement.

**Structural Protection:** To protect structures from the threat of damage from advancing wildland fire. This normally does not include an attack on the fire that is inside the structure. It involves the use fire control lines and the extinguishment of spot fires near or on the structure.

**Structural Fire Suppression:** Defined as interior and exterior actions to suppress and extinguish a burning structure or improvement associated with standard structure fire protection, equipment, and training.

**Suppression:** All the work of confining and extinguishing a wildland fire beginning with its discovery through the incident's conclusion.

**Values to be Protected:** Include property, structures, physical improvements, natural and cultural resources, community infrastructure, and economic, environmental, and social values.

**Wildland Fire:** Uncontrolled non-structural fire burning in wildlands such as forest, brush, prairie, or cropland fuels, or conflagrations involving such fuels and structures.

**Wildland:** Lands with few or no permanent improvements.

**EXHIBIT B**

**COST APPORTIONMENT AGREEMENT**

This Cost Apportionment Agreement's purpose is to provide for a coordinated cooperative wildland fire suppression operation on this incident and to describe the cost apportionment. This agreement is entered into as required in the Financial Plan, which is a supplemental document to the Joint Powers Agreement for Wildland Fire Protection and Suppression, **EMNRD No. 13-521-2300-0013**.

1. Incident Name \_\_\_\_\_ Origin Date \_\_\_\_\_ Time \_\_\_\_\_

2. Township \_\_\_\_\_ Range \_\_\_\_\_ Section \_\_\_\_\_

3. Estimated Size \_\_\_\_\_ Acres at the time of this Agreement.

4. Agency \_\_\_\_\_ Fire Number \_\_\_\_\_

Agency \_\_\_\_\_ Fire Number \_\_\_\_\_

5. This Agreement becomes effective on \_\_\_\_\_ at \_\_\_\_\_ and remains in effect until \_\_\_\_\_ or until otherwise amended or terminated.

<u>6. Position</u>	<u>Name</u>	<u>Agency</u>
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Incident Commander \_\_\_\_\_

Finance Section Chief \_\_\_\_\_

7. Authorized Representatives participating in development of Cost Apportionment Agreement:

Agency \_\_\_\_\_ Agency \_\_\_\_\_

Name \_\_\_\_\_ Name \_\_\_\_\_

Title \_\_\_\_\_ Title \_\_\_\_\_

**8. Unless otherwise justified in item 9 below, the default apportionment shall be as follows: Suppression costs for multi-jurisdictional wildland fires shall be shared based upon the Jurisdictional Agencies percentage of area (acreage) affected by the fire. It is hereby agreed that this Incident's cost shall be apportioned as follows:**

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**9. Departures to this approach (Item 8) may be made by mutual agreement when the result would be inequitable due to an extraordinary event or extra suppression effort required for the protection of the Jurisdictional Agencies' resources.**

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**10. This Agreement, and the apportionment indicated, is our best judgment of Agency cost responsibilities for this incident on the date/time shown. Future amendments to this Apportionment Agreement may be necessary, as conditions and fire spread change. The State Forester has the authority to enter into a cost share agreement on the State's behalf.**

Signature \_\_\_\_\_ Signature \_\_\_\_\_

Agency \_\_\_\_\_ Agency \_\_\_\_\_

Date \_\_\_\_\_ Date \_\_\_\_\_

Telephone \_\_\_\_\_ Telephone \_\_\_\_\_

**EXHIBIT C**  
**FINANCIAL PLAN**

**Billing Addresses:**

All bills for services provided to the state pursuant to Section 3 shall be mailed to the following address for payment:

Energy, Minerals and Natural Resources Department  
Forestry Division  
District Forester – Socorro District  
1701 Enterprise  
Socorro, New Mexico 87801

All bills for services provided to the City of Las Cruces pursuant to Section 3 shall be mailed to:

Fiscal Agent  
City of Las Cruces  
P.O. Box 20000  
Las Cruces, New Mexico 88004

**EXHIBIT D**  
**Example of RMP Rate Sheet**  
**STATE OF NEW MEXICO RMP – ENGINE RATE SHEET**

1. ORDERING OFFICE/ADMINISTRATIVE OFFICE FOR PAYMENT (name and address)		AGREEMENT NUMBER MUST APPEAR ON ALL PAPERS RELATING TO THIS RATE SHEET				
EMNRD-FORESTRY DIVISION SOCORRO DISTRICT 1701 ENTERPRISE STREET SOCORRO, NM 87801 PHONE: 575-835-9359 FAX: 575-835-9452		2. AGREEMENT NUMBER JPA 13-521.2300-0013				
		3. EFFECTIVE DATES a. Beginning			b. Ending	
4. ENTITY (name and address)  City of Las Cruces P.O. Box 20000 Las Cruces, NM 88004  b. TIN: 85-60000###		5. I-SUITE CODING EQUIPMENT AGENCY - NM				
		6. THE WORK RATE IS BASED ON ALL OPERATING SUPPLIES FURNISHED BY  <input checked="" type="checkbox"/> ENTITY <input type="checkbox"/> EMNRD				
c. Telephone Number (day)	d. Telephone Number (night)	7. WORK RATE IN BOX 11 & 12  <input checked="" type="checkbox"/> STAFFED RATE <input type="checkbox"/> UNSTAFFED RATE				
8. TYPE OF ENTITY ("X" appropriate boxes) <input checked="" type="checkbox"/> MUNICIPAL <input type="checkbox"/> COUNTY						
9. ITEM DESCRIPTION (include make, model, year, G- Plate, VIN, and accessories)	10. NUMBER OF OPERATORS	11. WORK OR DAILY a. rate      b. unit		12. SPECIAL c rate      d. unit		13. GUARANTEE (8 or more hours)
a.						
b.						
c.						
d.						
14. SPECIAL PROVISIONS Operator(s) will be furnished by the Entity and work rate includes personnel. <b>Guarantee</b> For each calendar day that equipment is under hire payment will be made for a minimum guarantee of at least 8 hours. For the 1 <sup>st</sup> and last day payment will be based on actual hours worked and travel, the guarantee will not apply. <b>Fuel surcharge</b> beginning and ending mileage will be documented daily on the Emergency Equipment Shift Ticket(s), if the daily total exceeds 100 miles then miles exceeding 100 will be compensated at a rate of .44 a mile. <b>Finance Section</b> will collect and post Emergency Equipment Shift Tickets for equipment for each operational period. Upon checkout/demobilization cooperator will receive <b>all original</b> Emergency Equipment Shift Ticket(s), OF-286 Emergency Equipment Use Invoice(s) and copies of Pre-Use and Release Inspections.						
15. FISCAL OR AUTHORIZED AGENT'S SIGNATURE		16. DATE	17. FORESTRY DIVISION AUTHORIZED SIGNATURE		18. DATE	
19. PRINT NAME AND TITLE		20. PRINT NAME AND TITLE				