

**NEW MEXICO WILDLAND FIRE MANAGEMENT JOINT POWERS MASTER
AGREEMENT**

Among

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

New Mexico State Office, agreement number GDA080001 and DUNS number
614053387

NATIONAL PARK SERVICE

Intermountain Region, agreement number F1250080001 and DUNS number
103630625

BUREAU OF INDIAN AFFAIRS

Southwest Regional Office, agreement number AGM00080002 and DUNS number
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UNITED STATES FISH AND WILDLIFE SERVICE

Southwest Region, agreement number 201818J601 and DUNS number 129283532

**UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE**

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STATE OF NEW MEXICO

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I) AUTHORITIES:

Reciprocal Fire Protection Act of May 27, 1955 (69 Stat. 66; 42 U.S.C. § 1856 *et seq.*) (Federal Agencies)
Economy Act of June 30, 1932 (31 U.S.C. § 1535 as amended) (Federal Agencies)
Disaster Relief Act of May 22, 1974 (42 U.S.C. § 5121 as amended) (Federal Agencies)
Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93-288; 42 U.S.C. § 5121 *et seq.*) (Federal Agencies)
Homeland Security Act of 2002 (H.R. 5005-8)
Homeland Security Presidential Directive-5 (HSPD-5)
Watershed Restoration and Enhancement Act of 1998 (P.L. 105-277)
National Indian Forest Resources Management Act (P.L. 101-630, Title III) (Interior Agencies)
Taylor Grazing Act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. § 315) (BLM, USFS)
Granger-Thye Act of April 24, 1950 (16 U.S.C. § 572) (USFS)
Cooperative Funds and Deposits Act of Dec 12, 1975 (P.L. 94-148, 16 U.S.C. § 565) (USFS)
Cooperative Forestry Assistance Act of July 1, 1978, as amended (16 U.S.C. § 2101) (USFS)
Cooperative Funds Act of June 30, 1914 (16 U.S.C. § 498) (USFS)
Department of the Interior and Related Agencies Appropriations Act, 1999, as included in P.L. 105-277, section 101(e)
Federal Land Policy and Management Act of Oct. 21, 1976 (P.L. 94-579; 43 U.S.C. § 1701 *et seq.*) (BLM)
NPS Organic Act (16 U.S.C. § 1) (NPS)
National Wildlife Refuge Administration Act of 1966 (16 U.S.C. § 668dd-668ee, 80 Stat. 927, as amended) (FWS)
National Wildlife Refuge System Improvement Act of 1997 (P.L. 105-57) (FWS)
Protection Act of September 20, 1922 (42 Stat. 857; 16 U.S.C. § 594) (Interior Agencies)
Federal Property and Administrative Services Act of 1949 (40 U.S.C. § 471) (Interior Agencies)
Federal Grant and Cooperative Agreement Act (96 Stat. 1003; 31 U.S.C. §§ 6301 through 6308) (Interior Agencies)
Act of March 29, 1944 (58 Stat. 132; 16 U.S.C. § 583c) (Federal Agencies)
Snyder Act (42 Stat. 208; 25 U.S.C. § 13) (BIA)
Department of Energy Organization Act of August 4, 1977 (P.L. 95-91; 42 U.S.C. § 7101 *et seq.*) (LASO)
Department of Energy Order 151.1C (LASO)
Forest Conservation Act, NMSA 1978, Sections 68-2-6, 68-2-8, and 68-2-24 (EMNRD)
Joint Powers Agreements Act, NMSA 1978, Section 11-1-1 *et seq.* (EMNRD)
State of New Mexico, Disaster Location Act, NMSA 1978, Sections 12-11-23 through 12-11-25 (EMNRD)
State of New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 *et seq.* (EMNRD)
Federal Emergency Management Agency, Disaster Assistance; Fire Management Assistance Grant Program, 44 CFR Part 204 (EMNRD)

II) **PURPOSE**

1. The purpose of this New Mexico Wildland Fire Management Joint Powers Master Agreement (hereinafter called the Agreement) is to document the Agencies' commitment to this Agreement to improve efficiency by facilitating the coordination and exchange of personnel, equipment, supplies, services, and funds among the Agencies to this Agreement for management of wildland fires.

In addition, presidentially-declared emergencies and disasters or other emergencies and disasters under the Federal Emergency Management Agency's authority are covered under this Agreement.

2. The Agencies to this Agreement are:

the State of New Mexico Energy, Minerals and Natural Resources Department, Forestry Division, hereinafter called the "EMNRD, Forestry Division";

the United States Department of Agriculture Forest Service, Southwest Region 3; hereinafter called the "USFS";

the United States Department of the Interior, National Park Service, Intermountain Region, hereinafter called the "NPS";

the United States Department of the Interior, Fish and Wildlife Service, Southwest Region, hereinafter called the "FWS";

the United States Department of the Interior, Bureau of Indian Affairs, Southwest Regional Office and Navajo Regional Office, hereinafter called the "BIA";

the United States Department of the Interior, Bureau of Land Management, New Mexico State Office, hereinafter called the "BLM"; and

the United States Department of Energy, National Nuclear Security Administration, Los Alamos Site Office (LASO), hereinafter called the "LASO" will act on this agreement through direction from the LANL Management and Operating Contractor).

The USFS, NPS, FWS, BIA, LASO, and the BLM may hereinafter be jointly called the "Federal Agencies".

The Federal Agencies, the EMNRD, Forestry Division, and other entities signatory to this Agreement shall hereinafter be referred to as the "Agencies".

3. Words and phrases used herein may have different meanings or interpretations for different readers. To establish a common understanding, words and phrases as used herein are defined in the Glossary of Wildland Fire Terminology found

on the "Publications" page of the National Wildfire Coordinating Group web-page and in the Glossary attached as Exhibit A. If the definition in the Glossary of Wildland Fire Terminology and the definitions in Exhibit A differ, those in the Glossary of Wildland Fire Terminology control.

4. Incorporation of exhibits into agreement.

The following exhibits are hereby incorporated into this Agreement:

- A Glossary of Terms
- B Principal Contacts
- C A sample Annual Operating Plan (AOP) Outline Guide
- D Reimbursable Billings and Payments
- E A sample Cost Share Agreement

5. Exhibits to this Agreement may be revised upon written agreement of the Agencies through execution of a state annual operating plan (AOP). The latest revision of an Exhibit from an AOP shall automatically be incorporated into this Agreement without necessitating a formal modification as defined in Paragraph 66.

6. Acknowledgement of supplements to the Agreement.

Supplements to this Agreement, AOPs, Project and Financial Plans, and Cost Share Agreements shall further describe working relationships, financial arrangements, and joint activities not otherwise specified under this Agreement's terms.

7. Hierarchy and precedence for Agreements, exhibits, etc.

Inconsistencies in this Agreement and attachments to this Agreement shall be resolved by giving precedence in the following order:

- this Agreement
- State AOP
- Exhibits to this Agreement
- Zone or Local AOP
- Project and Financial Plan

III) RECITALS

8. The EMNRD, Forestry Division is responsible for wildland fire protection on non-municipal and non-federal lands in New Mexico. The respective Federal Agencies are responsible for wildland fire protection on lands under their jurisdiction. These lands are intermingled or adjacent in some areas, and wildland fires on these intermingled or adjacent lands may present a threat to the lands of the other.

9. The Agencies maintain fire protection and fire management organizations; and the parties are public agencies as defined in NMSA 1978, Section 11-1-2.

10. It is to the Agencies' mutual advantage to coordinate efforts for the prevention, readiness, pre-suppression, detection, and suppression of wildfires; fuels management; use of wildland fire; and cooperative projects for resource protection in and adjacent to their areas of responsibility, and to limit duplication and improve efficiency and effectiveness.

11. It is the Agencies' intent that THE EMNRD, Forestry Division resources or, if available, other State of New Mexico or local government resources be available to assist in fire management activities on federal and tribal lands, and on other lands upon which the Federal Agencies provide support, including other states, Canada, and Mexico pursuant to 42 U.S.C. § Section 1856 *et seq.*

12. It is the Agencies' intent that federal resources be available to assist in fire management activities on state, county, and private lands for which the EMNRD, Forestry Division provides protection or has agreements to assist in suppression through state, county, and local resources.

In consideration of the mutual commitments and conditions herein made, the Agencies agree to the following terms.

IV) INTERAGENCY COOPERATION

13. **The EMNRD, Forestry Division as Liaison for the State of New Mexico:** The State Forester or designee is the liaison from the State of New Mexico to the Federal Agencies.

A. Other State Agencies:

When Federal Agencies require fire suppression assistance from State of New Mexico agencies other than the EMNRD, Forestry Division, the Federal Agencies shall make the request through the appropriate EMNRD, Forestry Division district office. The State Forester shall keep the New Mexico Department of Homeland Security and Emergency Management advised of developing fire situations with potential for civil disaster or the need for other state agency resources.

B. National Guard Assistance:

The Federal Agencies may only seek National Guard assistance, for wildland fire emergency purposes, through the EMNRD, Forestry Division, State Forester to the Governor, for a Governor's declared emergency. The Incident Commander shall advise the EMNRD, Forestry Division,

State Forester, upon the termination of the wildland fire emergency for purposes of demobilizing the National Guard. At that time, the EMNRD, Forestry Division State Forester shall advise the Governor and the Adjutant General's Office of Military Affairs Department that the fire emergency no longer exists.

C. **The EMNRD, Forestry Division as Liaison for Local Government Resources:**

The EMNRD, Forestry Division shall act as coordinator for New Mexico local government resources, including county and municipal fire departments, for the purposes of coordinated fire management services within and beyond New Mexico's boundaries per agreements between the EMNRD, Forestry Division and local governments. Federal Agencies shall request local government resources through the appropriate EMNRD, Forestry Division district office.

14. **Southwest Coordinating Group (SWCG):** This group shall provide coordination and recommendations for all interagency fire management activities in New Mexico. Membership, procedures, and guidelines shall be agreed to and documented in the SWCG Memorandum of Understanding and the SWCG Handbook.

15. **National Incident Management System:** The Agencies shall operate under the concepts defined in the Department of Homeland Security's National Incident Management System (NIMS) including the Incident Command System (ICS), qualifications system, training system, the management of publications, and participating in the review, exchange, and transfer of technology as appropriate for providing qualified resources, and for incident management. Agencies shall follow the National Wildfire Coordinating Group's National Interagency Incident Management System (NIIMS) minimum standards as defined in the *Wildland Fire Qualifications Systems Guide* (PMS-310).

16. **Annual Operating Plans:** The Agencies shall develop AOPs at the state or zone level and shall tier to this Agreement (see Exhibit C, Operating Plan Outline Guide). The following AOPs are listed in descending order of precedence.

A. **State Operating Plan:**

The state AOP shall address issues affecting statewide cooperation. The state AOP shall be approved by the EMNRD, Forestry Division and appropriate Federal Agencies.

The Southwest Mobilization Guide shall be identified as and considered part of the state AOP.

B. **Zone (Initial Attack) Operating Plans:**

Unit Administrators shall develop zone (Initial Attack) operating plans through their zone representatives that outline the details of this Agreement for zones. The plans shall establish and map protection areas and boundaries, and shall outline the details of implementing this Agreement for the Interagency Zone Dispatch Center areas. Unless superseded by the state AOP, zone operating plans shall apply.

C. Project Plans:

Project plans are developed for specific non-suppression, fire related projects. Agencies participating in the project shall document such projects in separate agreements. Documentation shall include the objectives, specific authorizing law, each Agency's role, and each Agency's share of cost.

17. Interagency Dispatch Centers: The Agencies agree to maintain, support, and participate in Interagency Dispatch Centers and the Southwest Coordination Center, as appropriate. It is intended that Center Managers be from any of the participating agencies and as such, have the agency-specific authorities from each participating agency to conduct the Center's operation, except where prohibited by law. The transfer of funds by the EMNRD, Forestry Division to Federal Agencies for the purposes of operations other than wildland fire suppression requires a separate agreement.

The affected Agencies to this Agreement shall agree to staffing, funding, and level of participation and document them in AOPs or appropriate mobilization guides.

18. Southwest Coordination Center: The Agencies recognize the Southwest Coordination Center in Albuquerque, New Mexico as the Geographic Area Coordination Center (GACC) for the New Mexico, Arizona, and West Texas Geographic Area. The Agencies shall coordinate fire management activities and resource movements through the GACC as appropriate. Agencies are not precluded from independent movement of their own resources.

19. Interagency Resources: Agencies shall pursue interagency funding, staffing, and use of resources and facilities whenever an interagency approach is appropriate and cost effective. Shared staffing and funding shall be commensurate with each Agency's use of resources, shall be agreed to and documented in the operating plans, and shall be subject to the availability of appropriations.

To the extent practical, Agencies shall coordinate additional preparedness resource requests. The coordination process shall be identified in the AOP.

20. Standards: It is the Agencies' goal to achieve common standards within the Agencies' best interest, recognizing differing agency missions and mandates. Each Agency recognizes that other agency standards are reasonable, prudent, and

acceptable. This paragraph is not intended to affect the Jurisdictional Agency's land management standards.

V) PREPAREDNESS

21. **Definition of Responsibilities:** The Agencies shall be distinguished as follows:

- A. **Jurisdictional Agency:** The Agency having overall land and resource management or protection responsibility for a specific geographical or functional area as provided by federal or state law. Under no circumstances shall a Jurisdictional Agency abdicate legal responsibilities as provided by federal or state law.
- B. **Protecting Agency:** The Agency responsible for providing direct incident management and services to a given area pursuant to its jurisdictional responsibility or as specified by federal or state law, contract, or agreement.
- C. **Supporting Agency:** An Agency providing suppression or other support and resource assistance to a Protecting Agency.

22. **Protection Planning:** Annually, before March 15, zone Unit Administrators or their representatives shall determine efficiencies to be gained from reciprocal assistance and acquisition of protection services. AOPs shall document decisions. The Agencies should review plans and reach agreement concerning such items as placement of crews, engines, air tankers, helicopters, fixed and aerial detection, regulated use, closures, and other joint fire suppression efforts.

23. **Protection Areas and Boundaries:** Annually, the Agencies within the zones shall map and describe protection areas, as defined by boundaries, and make them a part of AOPs.

24. **Methods of Fire Protection and Suppression:** One Agency may provide fire protection services on lands under the jurisdiction of another, within its authority and as authorized by law. The following are different methods to provide those services.

- A. **Initial Attack Exchange Fire Protection:** As deemed appropriate, the Agencies may, by agreement in AOPs, establish reciprocal initial attack zones for lands of intermingled or adjoining protection responsibility. Within such zones, a Supporting Agency shall, upon request or voluntarily, take initial attack action in support of the Protecting Agency.

The Protecting Agency shall bear costs for fires that are suppressed under initial attack exchange. The Protecting Agency shall not be required to reimburse the Supporting Agency for costs incurred following the initial dispatch of any resources to the fire for the duration of the

mutual aid period, unless specifically stated by contract or agreement. The length of the mutual aid period should not exceed 24 hours, unless specifically stated by agreement or contract, and shall be documented in the AOP.

When the Protecting Agency provides initial attack exchange fire protection services and the incident exceeds initial attack capabilities, the Protecting Agency shall notify the Jurisdictional Agency and the Jurisdictional Agency shall assume suppression responsibility for the fire.

Under this situation, the Protecting Agency's status changes to Supporting Agency and the Jurisdictional Agency shall bear all costs, including initial attack. The Jurisdictional Agency shall not be required to reimburse costs to Protecting or Supporting Agencies for fires that exceed initial attack capabilities if the Protecting or Supporting Agency does not notify the Jurisdictional Agency within a reasonable time, not to exceed 24 hours.

- B. **Reimbursable (Cooperative) Fire Protection:** The Protecting Agency may request other Agencies' suppression resources for its protection work. The Protecting Agency shall pay for the requested resources. See Exhibit D regarding Reimbursable Billings and Payments.
- C. **Exchange (Offset) Fire Protection:** Agencies may exchange responsibility for fire protection for lands under their jurisdiction. The rate of exchange shall be based upon comparable cost, acreage involved, complexity, and other factors as appropriate and mutually agreed to by the Agencies. Exchange zones shall be documented in AOPs.

25. **Joint Projects and Project Plans:** The Agencies may jointly conduct cooperative projects, within their authority and as authorized by law, to maintain or improve their fire management services and activities. These projects may involve such activities as prescribed fire, fuels management, pre-suppression, fire analysis or planning, rehabilitation, training, prevention, public affairs, and other beneficial efforts. The Agencies participating shall document such projects in separate agreements or other appropriate written documents referencing the appropriate authority. Documentation shall include the objectives, each Agency's role, and each Agency's share of costs.

Unit Administrators of Agencies may execute project plans and bill according to Exhibit D, Reimbursable Billings and Payments.

26. **Fire Prevention:** The Agencies agree to cooperate in the development and implementation of fire prevention programs. Unit Administrators or their representatives shall assure that fire prevention goals and activities are planned at local levels and are addressed in AOPs. Local interagency fire management personnel should develop specific fire prevention plans. The Agencies may pool resources and share costs. Agencies are encouraged to participate in local fire prevention

cooperatives, organizations, or groups, where applicable.

27. **Public Use Restrictions:** The parties involved shall cooperate in establishing guidelines for implementing restrictions or closures as appropriate with each Agency's authority.

28. **Burning Permits:** The Agencies shall follow burning permit procedures or ordinances applicable to the local area to the extent permitted by applicable federal or state laws.

29. **Prescribed Fire and Fuel Management:** The Agencies agree to cooperate in the development and implementation of prescribed fire and fuels management programs. Documentation shall comply with Paragraph 25, Joint Projects and Project Plans.

30. **Smoke Management:** Within their authorities, the Agencies agree to cooperate in smoke management programs and shall comply with applicable smoke management laws.

VI) OPERATIONS

31. **Closest Forces Concept:** The guiding principle for dispatch of initial attack suppression resources is to use the closest available resource regardless of which Agency owns and controls the resources, and regardless of which Agency has protection responsibility.

32. **Fire Notifications:** Each Agency shall promptly notify the appropriate Protecting Agency of fires burning on or threatening lands for which the Protecting Agency has protection responsibility. Likewise, Protecting Agencies shall promptly inform Jurisdictional Agencies whenever they take action on fires for which the Protecting Agency is responsible. The Protecting Agency shall send fire reports to Jurisdictional Agencies within 30 days after a fire is declared out.

33. **Boundary Line (Multi-jurisdictional) Fires:** A boundary line fire, as defined in Exhibit A, Glossary of Terms, shall be the initial attack responsibility of the Protecting Agencies on either side of the boundary. Neither Protecting Agency shall assume the other Protecting Agency is aware of the fire or that the other Protecting Agency will take action. Each Protecting Agency shall make every reasonable effort to communicate with the other concerning the fire.

- A. The Protecting Agencies shall designate an Incident Commander or establish a Unified Command in consideration of the lands threatened. The Agencies shall notify the appropriate zone dispatch of the designation as soon as possible. The qualifications of the Incident Commander shall be based on the fire's complexity and the National Wildland Fire Qualifications System.

- B. The Protecting and Jurisdictional Agencies shall participate in joint planning sessions to reach mutual agreement on strategy and tactics in accordance with policy guidelines that the Jurisdictional Agencies prescribe.
- C. The Jurisdictional Agency administrators or their authorized representatives shall prepare a Cost Share Agreement (see Exhibit E for recommended Cost Share Agreement).

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

34. Independent Action: Where not prohibited, an Agency, on its own initiative and without reimbursement, may respond to wildland fires on lands known to be protected by another Agency to this Agreement, when such fires threaten lands that are that Agency's protection responsibility. In such instances, the Agency taking action shall promptly notify the Jurisdictional Agency. The Protecting Agencies' actions shall be commensurate with the Jurisdictional Agency's land and resource management considerations, and subject to the Jurisdictional Agency's laws.

Note: Due to security restrictions and concerns, before an Agency, besides LANL, responds to a wildland fire on property owned by LASO and occupied by the Los Alamos National Laboratory (including airspace above said Laboratory), the Agency will need to provide notification and obtain permission to respond. To facilitate granting of such permission, Agencies should contact the LANL Emergency Operations Division 24/7 Duty Officer at 505-667-6211.

35. Escaped Prescribed Fires: Wildfire resulting from escaped prescribed fires shall be the Jurisdictional Agency's responsibility. Unless otherwise agreed, all suppression costs are the Jurisdictional Agency's responsibility.

If the Agencies to this Agreement conduct a cooperative prescribed fire, the responsibility for suppression costs, should it escape, shall be agreed upon and documented in the project plan.

36. Wildland Fire Use: Whenever possible, decisions regarding wildland fire use shall be made cooperatively and involve the Agencies whose lands the decisions may affect. The suppression cost for an escaped wildfire resulting from wildland fire use shall be the Jurisdictional Agency's responsibility, unless otherwise agreed.

If the Agencies manage a cooperative wildland fire use incident, the Agencies shall agree upon and document responsibility for suppression and management costs in the wildland fire implementation plan.

37. Appropriate Management Response: Fire suppression action conducted on

lands of another Agency shall be consistent with the Jurisdictional Agency's fire suppression and land and resource management policies. The Jurisdictional Agency and Incident Commander should consider suppression strategies with regard to safety, resource values, property protection and cost effectiveness. The Incident Commander shall incorporate special management considerations into the incident planning process, subject to the delegation of authority.

38. **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.

39. **Delegation of Authority:** Agencies shall provide guidance to their Unit Administrators that gives direction, authority, and financial management guidelines to Incident Commanders.

40. **Law Enforcement and Preservation of Evidence:** The Agency with jurisdiction over the location where the fire originates shall be responsible for any law enforcement action. As initial action is taken on a fire, the initial attack forces shall preserve information and evidence pertaining to the fire's origin and cause. Protecting and Jurisdictional Agencies shall render mutual assistance in the gathering of evidence to the fullest extent practicable. Affected Agencies shall meet to determine an investigation process.

41. **Structural Protection:** Nothing in this Agreement is intended to make Federal Agencies or the EMNRD, Forestry Division responsible for structural fire suppression. The Agencies involved may negotiate reasonable community protection activities in advance and include them in the delegation of authority.

VII) USE AND REIMBURSEMENT OF INTERAGENCY FIRE RESOURCES

42. **Appropriated Fund Limitation:** Nothing in this Agreement obligates the Agencies to expend funds for the future payment of money in excess of or in advance of appropriated funds available for payment to meet the commitments of this Agreement except as specifically authorized by law.

43. **Duration of Assignments:** Consideration shall be given to the health and safety of personnel when assigned to fires. The Agencies agree that Incident Commanders shall release suppression resources to their primary responsibilities as soon as priorities allow. Incident Commanders shall adhere to work/rest policies of respective responding Agencies.

44. **Cost Share Agreement:** When a fire affects multiple jurisdictions, those jurisdictions shall develop and implement a Cost Share Agreement as soon as possible

after a fire escapes initial attack. Except as otherwise provided by Paragraphs 34 (Independent Action), and 54 (Billing Procedures), the responsible Unit Administrators (as defined in Exhibit A, Glossary of Terms) or their authorized representatives shall develop and approve a Cost Share Agreement when the incident involves lands of more than one Jurisdictional Agency (see Paragraph 33 (Boundary Line Fires), and Exhibit E, Cost Share Agreement).

The State Forester may enter into cost share agreements on behalf of the EMNRD, Forestry Division. On a fire originally attacked by an Agency as a multi-jurisdictional fire but later determined not to be a multi-jurisdictional fire, the Jurisdictional Agency shall pay the Supporting Agency for fire suppression costs.

Agencies may use Exhibit E to document cost sharing, for temporary support functions or facilities established during periods of high fire danger or activity.

45. **Procurement:** Whenever the EMNRD, Forestry Division is responsible for the management of an incident (including an incident within a Federal Agency's direct protection area), the EMNRD, Forestry Division shall comply with state laws covering procurement.

46. **No New Capital Outlay:** No property other than expendable materials actually consumed or reimbursement for equipment lost or damaged during fire suppression activities (*i.e.* no capital outlay for new items such as chainsaws, water pumps, generators, computers, etc.) shall be purchased.

47. **Reimbursement Rates:** Reimbursement rates for resources Federal Agencies provide shall comply with rules in the most current Interagency Incident Business Management Handbook or that Agency's procedures. Reimbursement rates for local government resources shall comply with the EMNRD, Forestry Division approved rates.

48. **Loaned Equipment and Supplies:** Equipment and supplies (*i.e.* commonly used fire cache items such as pumps, hoses, nozzles, etc.) loaned to another Agency shall become that Agency's responsibility, and shall be returned in the same condition as when received, reasonable wear and tear excepted. As determined by the loaning Agency, the receiving Agency shall repair or reimburse for damages in excess of reasonable wear and tear and shall replace or reimburse for items lost, destroyed, or expended. The issuing Cache shall submit Cache Loss Reports to the Jurisdictional Agency within 120 days after the fire.

49. **Licensing:** Drivers and equipment operators shall hold appropriate operating licenses to meet state and federal laws. Employees of another Agency may operate a Federal Agencies' vehicles provided the operator is qualified by the current operating guidelines and training requirements of the Agency that owns or leases the vehicle. Driving shall be for official or emergency purposes only. Only State of New Mexico employees may operate State of New Mexico vehicles.

50. **Training:** The Agencies shall cooperate to assure that training needs are provided that produce safe and effective fire management and aviation programs. The intent is to champion high quality training, to minimize training costs by sharing resources, and to standardize training.
51. **Communication Systems:** The Agencies may mutually agree to allow one another the use of communications systems such as radio frequencies, computer system access, data transmission lines, and communication sites when there is a mutual benefit to the Agencies.
52. **Fire Weather Systems:** The Agencies shall cooperate in the gathering, processing, and use of fire weather data, including the purchase of compatible sensing systems and the joint use of computer software. National Fire Danger Rating System (NFDRS) is the common and agreed upon fire danger rating system for the Southwest Geographic Area.
53. **Aviation Operations:** The Agencies agree to cooperate in use of aviation resources to foster effective and efficient use of aircraft and personnel. (Refer to the Southwest Area Mobilization Guide for specific direction in the use of aircraft.)
54. **Billing Procedures:** Specifics are detailed in Exhibit D, Reimbursable Billings and Payments and the state AOP.
55. **Cost Recovery:** Authority to recover suppression costs and damages from individuals causing a fire varies depending on contracts, agreements, permits, and applicable laws. The Authorized Representatives of affected Agencies shall attempt to reach mutual agreement as soon as possible after a fire on the strategy that the Agencies will use to recover suppression costs and damages from the individuals liable for such costs and damages. Such strategy may alter interagency billing procedures, timing, and content as otherwise provided in this Agreement. An Agency may independently pursue civil actions against individuals to recover suppression costs and damages. In those cases where costs have been recovered from an individual, reimbursement of initial attack, as well as suppression costs to the extent included in the recovery, shall be made to the Agency that incurred those costs.

VIII) ADMINISTRATIVE PROVISIONS

56. **Personnel Policy:** Employees of the Agencies shall be subject to the personnel rules, regulations, and statutes of their respective agencies, unless they are employed temporarily by another Agency and the authority under which such temporary employment is authorized provides that such employees shall be subject to the employing agency's personnel statutes and regulations or rules.
57. **Worker's Compensation:** For the purposes of worker's compensation coverage, employees of the State of New Mexico are covered under the New Mexico

Worker's Compensation Act, NMSA 1978, Section 52-1-1 *et seq.*, while assigned to assist in suppressing fires on lands of Federal Agencies. Federal Agency employees are covered under the applicable federal regulations pertaining to worker's compensation, while assigned to assist in suppressing fires on lands under the EMNRD, Forestry Division jurisdiction.

58. **Sharing of Information:** Subject to applicable state rules and federal regulations, including the Privacy Act, Agencies may furnish to each other, or otherwise make available upon request, such maps, documents, GIS data, instructions, records, and reports including, but not limited to, fire reports, employment records, and investigation reports as either Agency considers necessary in connection with the Agreement.

59. **Accident Investigations:** When an accident occurs involving the equipment or personnel of a Supporting Agency, the Protecting Agency shall immediately notify the Jurisdictional and Supporting Agencies. As soon as practical, the Jurisdictional Agency shall initiate an accident investigation. The investigation shall be conducted by a team made up of representatives from affected Agencies, as appropriate.

60. **Waiver of Claims:** The United States federal government and the State of New Mexico do not have the authority to indemnify or hold harmless the other party from all claims, liabilities, losses, damages, charges, etc. The State of New Mexico shall be responsible for errors, omission, and negligence of its employees to the extent provided under the New Mexico Tort Claims Act, NMSA 1978, Section 41-1-1 *et seq.* The United States shall be responsible for the errors, omission, and negligence of its employees to the extent provided by Congress under the Federal Tort Claims Act (28 U.S.C. §§ 1346 (b), 2401 (b) and 2671-2680, as amended by P.L. 80-506, 80 Stat. 306). Third party claims that may arise under the performance of this Agreement shall be determined solely under the Federal Tort Claims Act as to Federal Agencies and under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 *et seq.*, as to the EMNRD, Forestry Division.

61. **Strict Accountability for Receipts and Disbursements and Examination and Audit:** The Agencies shall be strictly accountable for receipts and disbursements relating to this Agreement and shall make all relevant financial records available upon request, and shall maintain all such records for three years after final payment. These records shall be subject to examination and audit for three years after final payment. The periods of examination and audit may be extended for records, which relate to litigation or settlement of claims arising out of performance of this Agreement upon notice of the need to retain the records from the Agency involved in the litigation or settlement to the other Agencies and shall continue until all potential litigation, appeals, claims or exceptions have expired or been resolved.

62. **Civil Rights:** The Agencies shall comply with all State of New Mexico and federal statutes relating to nondiscrimination on the basis of race, color, handicap, or national origin; Title IX of the Education Amendments of 1972, as amended (20 U.S.C.

§§ 1681-1683 and 1685-1686), which prohibits discrimination on the basis of sex: and the Human Rights Act, NMSA 1978, Section 28-18-1 *et seq.*

63. **Performance:** A party shall have the right to enforce this Agreement by any available remedy under the laws of the United States or the State of New Mexico.

64. **Conflict of Interest:** No members of or delegate to Congress shall be admitted to a share or part of this Agreement, nor to a benefit that may arise from this Agreement; but this provision shall not be construed to extend this Agreement if made with a corporation for its general benefit. For the EMNRD, Forestry Division, the State of New Mexico statutes governing conflict of interest shall control this Agreement.

65. **Participation of Agencies in this Agreement:** The signatories agree that if any of the Federal Agencies named in this Agreement fail to sign the Agreement before New Mexico Department of Finance (DFA) approval, they may become a signatory at a later date and shall become subject to the terms of the Agreement upon DFA's approval of their addition to the Agreement. This shall not require further written consent from the original signatories. Agencies signing at a later date agree to accept the Agreement without changes.

66. **Modifications:** This Master Agreement shall not be altered, changed, or amended except by instrument in writing executed by the parties hereto and approved by DFA with regard to the EMNRD, Forestry Division. This Agreement may be amended at any time by written, mutual consent of all parties. The EMNRD, Forestry Division shall coordinate any amendments. This Agreement may be altered by the addition of Agencies as provided in the previous section.

67. **Annual Review:** Prior to March 15 representatives of the EMNRD, Forestry Division and the Federal Agencies shall meet and review matters of mutual concern (see Exhibit B, Principal Contacts). Operating plans, at all levels, shall be reviewed annually. If necessary, operating plans shall be revised.

68. **Duration of Agreement:** This Agreement shall not become effective until approved by DFA and shall remain in effect for five years from the date that DFA signs it. An Agency shall have the right to terminate its participation under this Agreement by providing 90 days advance written notice to the other Agencies.

69. **Previous Agreements Superseded:** This Agreement supersedes the following:

State of New Mexico SHARE Joint Powers Agreement No. 000 ... 2489 (EMNRD No. 03-521-2300-0179) for Interagency Wildland Fire Protection signed and dated April 17, 2003, as amended.

Existing agreements and operating plans remain in effect to the extent that they do not conflict with the provisions of this Agreement, but only until such time that all activities and conditions covered by those agreements can be incorporated into AOPs provided

for under this Agreement.

70. **Authorized Representatives:** By signature below, all signatories to this Agreement certify that the individuals (Agency Representative, Agency Administrator, Unit Administrator) listed in this document are authorized to act in their respective areas for matters related to this Agreement.

EXHIBIT A

NEW MEXICO WILDLAND FIRE MANAGEMENT JOINT POWERS MASTER AGREEMENT GLOSSARY OF TERMS

Agency Representative: This Incident Command System position serves as the point of contact for an assisting or Jurisdictional Agency that has been delegated authority to make decisions on all matters affecting that Agency's participation at the incident and reports to the Liaison Officer.

Agency Administrator: Officials who are responsible for this Agreement, as follows: Bureau of Land Management, State Director; Forest Service, Regional Forester; Bureau of Indian Affairs, Regional Director; National Park Service, Regional Director; Fish and Wildlife Service, Regional Director; Los Alamos Site Office, Site Office Manager; EMNRD, Forestry Division, State Forester, etc.

Boundary Line Fire: Fire occurrences on lands of intermingled or adjoining protection responsibilities.

Closest Forces Concept: Dispatch of the closest available initial attack suppression resources regardless of which agency they belong to, and regardless of which agency has protection responsibility.

Cost Share Agreement: A document prepared to distribute costs on a multi-jurisdictional incident (see Exhibit E).

Escaped Fire: A fire that has exceeded, or is expected to exceed initial attack capabilities or prescription.

Fire Management Activities or Services: Any or all activities that relate to managing fire or fuels on lands under the jurisdiction of an agency to this Agreement. Activities include, but are not limited to: suppression, readiness, pre-suppression, prescribed fire, fuels management, fire analysis or planning, rehabilitation, training, prevention, public affairs, and other beneficial efforts.

Geographic Area Coordination Center (GACC): The physical location of an interagency, regional operation center for the effective coordination, mobilization, and demobilization of emergency management resources.

Indirect Cost: A fixed percentage rate as determined by a process provided for in the Indirect Cost Negotiation Agreement as in Office of Management and Budget (OMB) Circular A-87, to recover those costs that cannot be directly charged to the project. The rate shall be specified in the AOP.

Initial Attack Period: The first 24 hours, or by written local agreement.

Initial Attack Zone: An identified area in which predetermined resources would normally be the initial resource to respond to an incident.

Interagency: Involvement of two or more Agencies.

Jurisdictional Agency: The Agency having land and resource management or protection responsibility for a specific geographical or functional area as provided by federal, state, or local law.

New Mexico Area: The lands in New Mexico the Agencies manage or protect.

Offset: Exchange of fire management services in specific locations that is anticipated to be approximately equal value between Agencies.

Operating Plan – Geographic Area: A plan that includes all Geographic Area considerations. This will be developed at the Geographic Area level and approved by the Coordinating Group member agencies.

Operating Plan - State: A plan that includes all statewide considerations. This will be developed at the state level and approved by affected federal, tribal, state, and local Coordinating Group member agencies.

Operating Plan – Zone: A plan generated at a local sub-geographic level and authorized by Unit Administrators for implementing the New Mexico Wildland Fire Management Joint Powers Master Agreement in their respective areas of responsibilities.

Preparedness: Activities that lead to a safe, efficient, and cost effective fire management program in support of land and resource management objectives through appropriate planning and coordination.

Prescribed Fire: A fire ignited by management actions to meet specific objectives.

Prevention: Activities directed at reducing the incidence of fires, including public education, law enforcement, personal contact, and the reduction of fuel hazards (fuels management).

Procurement Documents: Agency specific financial obligation documents.

Protecting Agency: The Agency responsible for providing direct incident management and services to a given area pursuant to its jurisdictional responsibility or as specified and provided by federal or state law, contract, or agreement,

Protection: The actions taken to limit a fire's adverse environmental, social, political, and economical effects.

Protection Area: That area for which a particular fire protection organization has the primary responsibility for attacking an uncontrolled fire and for directing the suppression actions.

Protection Boundaries: The exterior perimeter of an area within which a specified fire agency has assumed a degree of responsibility for wildland fire control.

Protection Area Maps: Official maps that identify areas of direct fire protection responsibility for each agency.

Reciprocal Fire Suppression: Reciprocal fire suppression is the act of helping the Protecting Agency, at no cost, for the first 24 hours or by written agreement, to suppress wildfires. Reciprocity is attained by agreeing among agencies regarding the kind, location, and numbers of firefighting resources that will automatically be made available as part of the initial response to a wildfire, regardless of the Protecting Agency. The kind, locations, and numbers of resources that constitute reciprocity are defined in or through zone AOPs. Reciprocity may be thought of as the implementing mechanism of the closest forces concept.

Reimbursable Costs: All costs associated with operations and support ordered on a resource order or project plan by or for an incident or project within the provisions of this Agreement. Such costs may include, but are not limited to, the following.

- Agency costs for transportation, salary, benefits, overtime, and per diem of individuals assigned to the incident or project.
- Additional support dispatching, warehousing, or transportation services supporting a resource order.
- Cost of equipment in support of the incident, contract equipment costs, and operating costs for agency equipment.
- Operating expenses for equipment assigned to the incident such as fuel, oil, and equipment repairs.
- Aircraft, airport fees, and retardant and other fire chemical costs.
- Agency-owned equipment and supplies lost, damaged, or expended by the Supporting Agency.
- Cost of reasonable and prudent supplies expended in support of the incident.
- Charges from the state-provided resources such as inmate crews, National Guard resources, and county and local resources.
- Indirect/Administrative costs as provided for in Exhibit D.

Supporting Agency: An agency providing suppression or other support and resource assistance to a Protecting Agency.

Suppression: All the work of extinguishing or confining a fire beginning with its discovery.

Third Party: A municipal or rural fire district that does not have a local agreement with a federal agency but is formally recognized by their respective state and has entered into a local agreement with the state for fire management services.

Unit Administrator: The individual assigned administrative responsibilities for an established organizational unit, such as Forest Supervisor for the Forest Service, District Manager for the Bureau of Land Management, Agency Superintendent for the Bureau of Indian Affairs, Park Superintendent for the National Park Service, Project Leader for Fish and Wildlife Service and District Forester for the EMNRD, Forestry Division.

Wildfire: An unplanned, unwanted wildland fire, including unauthorized human-caused fires, escaped wildland fire use events, escaped prescribed fire projects, and all other wildland fires where the objective is to put the fire out.

Wildland Fire Use: The application of the appropriate management response to naturally ignited wildland fires to accomplish specific resource management objectives in predefined designated areas outlined in Fire Management Plans.

Wildland Fire: A non-structure fire, that occurs in the wildland. Three distinct types of wildland fire have been defined and include **wildfire**, **wildland fire use**, and **prescribed fire**.

**EXHIBIT B
NEW MEXICO WILDLAND FIRE MANAGEMENT
JOINT POWERS MASTER AGREEMENT
PRINCIPAL CONTACTS**

The Principal Contacts have been updated and placed at the end of this document following Amendment 3

EXHIBIT C

NEW MEXICO WILDLAND FIRE MANAGEMENT JOINT POWERS MASTER AGREEMENT ANNUAL OPERATING PLAN (AOP) OUTLINE GUIDE

PREAMBLE

This operating plan is prepared pursuant to the New Mexico Wildland Fire Management Joint Powers Master Agreement (SHARE No. 000 ... 7104; EMNRD No. 08-521-230-0288) signed and dated _____.

This operating plan supersedes:

(List applicable local agreements and Operating Plans.)

INTERAGENCY COOPERATION

Interagency Dispatch Centers: Specify staffing, funding, and level of participation agreed to.

Interagency Resources: Identify funding and staffing of joint resources commensurate with each Agency's use.

PREPAREDNESS

Protection Planning: Determine and document efficiencies from acquisition of protection services and reciprocal assistance. Include preparedness plan.

Protection Areas and Boundaries: Identify areas (map or describe).

Reciprocal Fire Assistance: Document reciprocal initial attack zones. Identify placement of crews, engines, air tankers, helicopters, fixed and aerial detection, regulated use, closures, and other joint fire control efforts.

Acquisition of Services: Identify areas for reimbursable, offset, or fee basis services. Method used to establish fee or rate of exchange. Terms and conditions. Work to be done by Protecting Agency and its responsibilities.

Joint Projects and Project Plans: Document joint cooperative projects including objectives, role of each Agency, and financial plan.

Fire Prevention Policies: Identify goals, activities, resources, and cost sharing.

Public Use Restrictions: Implementation procedures (see Southwest Operating Plan

for guidelines).

Burning Permit Procedures: See New Mexico burning permit requirements.

Prescribed Fire and Fuels Management: Include notification procedures.

Smoke Management: See New Mexico smoke management requirements.

OPERATIONS

Fire Notifications: Specify notification procedures.

Boundary Line Fires: Specify notification procedures.

Independent Action on Lands Protected by Another Agency: Discuss any special land management considerations that affect independent action initial attack. Describe areas, if any, where there are exceptions to this paragraph and state reasons.

Land Management Considerations: Identify areas where there are special suppression considerations and describe.

Delegation of Authority: Describe procedures (delegation of authority, etc.) that local Unit Administrators shall use to inform Incident Commanders.

Resource Advisors: Assigned by Jurisdictional Agency.

USE AND REIMBURSEMENT OF INTERAGENCY FIRE RESOURCES

Training: Identify training needs, schedules, billing arrangements, agreed to sharing of resources. Refer to Paragraph 25 (Joint Projects and Project Plans) regarding needed project plans.

Communication Systems: Identify specific radio frequencies, computer system access, data transmission lines, communication sites, and communications equipment shared between Agencies.

Fire Weather Systems: Specify maintenance, use, and management, if any.

Aviation Operations: Identify and document any local aviation agreements.

Financial Plan: See cost share agreement Attachment E.

Billing Procedures: See cost share agreement Attachment D.

Fire Suppression Billings: List jurisdictional unit, if different than identified in the

Southwest Area Mobilization Guide. Provide as a minimum on each invoice/bill:

- cooperator name, address, phone number, and agency financial contact;
- invoice or bill number;
- agreement number;
- incident name and number;
- start date of the incident covered by the billing;
- location and jurisdictional unit;
- appropriate incident number (state code or federal fire code);
- summary cost data for the amount being billed. Use incident generated cost information or standard generated cost reports generated by the Agency to support the billing whenever possible;
- amount of bill;
- whether or not it is a partial or final billing; and
- certification that the financial information is “True and Correct”.

Generally cost source documents shall not be required unless summary cost data is disputed or another agency requires source documents (*i.e.* FEMA). Summary cost data shall include, but not be limited to, a list of personnel expenses including base, overtime, and travel and a listing by vendor name and amount spent for supplies and services procured.

Electronic Funds Transfer (EFT): The EMNRD, Forestry Division shall designate a financial institution or an authorized payment agent through which a federal payment may be made in accordance with U.S. Treasury Regulations, Money, and Finance at 31 CFR 208, which requires that federal payments are to be made by EFT to the maximum extent possible. A waiver may be requested and payments received by check by certifying in writing that one of the following situations applies.

1. The payment recipient does not have an account at a financial institution.
2. EFT creates a financial hardship because direct deposit will cost the payment recipient more than receiving the check.
3. The payment recipient has a physical or mental disability, or a geographic, language, or literacy barrier.

The Forest Service requires Electronic Funds Transfers.

In order to receive EFT payments, the EMNRD, Forestry Division shall register in the Central Contractor Registry (CCR) at www.ccr.gov and follow the instructions on line. For assistance, contact the CCR Assistance Center at 888-227-2423 or 269-961-4725.

Third Party Cost Recovery: Procedures for determining a cost recovery process shall be in the state AOP. Investigation process is determined locally.

EXHIBIT D

NEW MEXICO WILDLAND FIRE MANAGEMENT JOINT POWERS MASTER AGREEMENT REIMBURSABLE BILLINGS AND PAYMENTS

A) Suppression Billings

1. **Federal Billings:** Federal Agencies shall not bill each other for fire suppression support. Federal Agencies shall submit bills for their reimbursable costs to the EMNRD, Forestry Division whenever the EMNRD, Forestry Division or local governments, where the EMNRD Forestry Division has an agreement with the local government and has requested federal resources on the local government's behalf, are the Jurisdictional Agency and a billing is appropriate.
2. **State or Association Billings:** When the EMNRD, Forestry Division or local governments are the Supporting Agency and the fire is within New Mexico, the EMNRD, Forestry Division shall bill the Jurisdictional Agency for reimbursable costs when a billing is appropriate. Anytime the EMNRD, Forestry Division, another state agency, or local governments respond to an incident outside of New Mexico, the EMNRD, Forestry Division shall bill all applicable costs to the appropriate Federal Agency. AOPs shall include billing location information.
3. **Billing Estimates and Time Frames:** The Billing Agency shall submit a bill or estimate for reimbursement as soon as possible, but no later than 180 days after the fire is controlled. If the total cost of the fire is not known at the time of initial billing, a partial bill may be submitted. A final bill, so identified, shall be issued within 270 days after control of the fire. After the final billing has been sent, and if additional costs are identified, a supplemental billing may be issued if agreeable to applicable parties. This supplemental billing must be submitted within 360 days after the fire is controlled, at which time the incident is closed out.
4. **Billing Estimates and 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 EMNRD, Forestry Division shall send a letter to the potential Federal Agencies who will be seeking reimbursement, advising them that the incident is FEMA reimbursable. The Federal Agency shall submit the bill for reimbursement to the EMNRD, Forestry Division within 120 days from the designated incident period date as per the Federal Emergency Management Agency, Disaster Assistance; Fire Management Assistance Grant Program, 44 CFR 204 or as amended.

B) Electronic Funds Transfer (EFT): The EMNRD, Forestry Division shall designate a financial institution or an authorized payment agent through which a federal payment may be made in accordance with U.S. Treasury Regulations, Money, and Finance at 31 CFR 208, which requires that federal payments are to be made by EFT to the maximum extent possible. A waiver may be requested and payments received by check by certifying in writing that one of the following situations apply:

1. The payment recipient does not have an account at a financial institution; or
2. EFT creates a financial hardship because direct deposit will cost the payment recipient more than receiving the check; or
3. The payment recipient has a physical or mental disability, or a geographic, language, or literacy barrier.

The Forest Service requires Electronic Funds Transfers.

In order to receive EFT payments, the EMNRD, Forestry Division shall register in the Central Contractor Registry (CCR) at www.ccr.gov and follow the instructions on line. For assistance, contact the CCR Assistance Center at 888-227-2423 or 269-961-4725.

C) Billing Content: Bills shall contain, at a minimum:

- cooperator name, address, phone number, and agency financial contact;
- invoice or bill number;
- agreement number;
- start date;
- name of incident and incident number;
- location and jurisdictional unit;
- appropriate incident number and state and federal fire code;
- summary cost reports generated by the Agency to support the billing, including applicable cost share agreements (see Exhibit C, Annual Operating Plan Outline Guide, for suggested additional details.);
- amount of bill;
- whether or not it is a partial of final billing; and
- certification that the financial information is "True and Correct".

Cost source documents shall not be required unless summary cost data is disputed or another agency requires source documents (*i.e.* FEMA). Summary cost data shall include, but not be limited to, a list of personnel expenses including base, overtime, and travel and a listing by vendor name and amount spent for supplies and services procured. Billings for fire suppression

assistance may include reimbursable costs (see Exhibit A, Glossary), and shall be assessed an indirect cost rate as provided for in the next section. Federal Agencies shall not bill each other for indirect costs for preparedness activities.

D) Indirect Rates for Overhead and Administration: Indirect rates for overhead and administration costs shall be based on the Agency's direct costs that are incurred pursuant to this Agreement and computed as follows:

<u>DIRECT COSTS</u>	<u>INDIRECT RATE</u>
1. Less than or equal to \$250,000.00	5%
2. Between \$250,000.00 and \$1,000,000.00	the greater of \$12,500.00 or 3%
3. Greater than \$1,000,000.00	the greater of \$30,000.00 or 1%

E) Payment Due: Whenever this Agreement provides for billing, the agency receiving the bill has an obligation to pay in accordance with this Agreement's terms. All bills shall be paid in accordance with the paying Agency's prompt payment procedures.

1. **Contested Billings:** Written notice that a bill is contested shall be mailed to the billing Agency within 60 days of issuance of the final bill and shall fully explain the contested items. Contested items shall be resolved not later than 60 days following receipt of the written notice. The uncontested portion of the bill shall be paid and a new bill shall be issued for the contested amount.
2. **Obligations:** For yearend obligation purposes, the Federal Agencies shall submit unpaid obligation figures to the EMNRD, Forestry Division by June 15. The EMNRD, Forestry Division shall submit unpaid obligation figures to the Federal Agencies by September 1 for the current billing year. All obligations shall be submitted by incident name, date, and incident number or federal fire code.

F) Non-Suppression Billings:

Agencies may enter into separate agreements to bill for activities not related to fire suppression within their authorities. Billing arrangements for such activities shall be documented according to agency policy and an indirect cost rate shall be assessed. Provisions described above also apply to these billings.

G) Third Party Payments:

Agencies to this Agreement may use third parties for fire management services, when the affected Agencies agree. Resource orders for third parties' personnel and equipment shall be made through and tracked by the parent state. To receive payment for services rendered, the third party shall submit all billing invoices to their parent state. Each invoice shall contain a "remit to address" and a "tax ID" number. All third party invoices shall be sent to the state within 120 days of completion of the fire management services, unless the state has granted a written request for an extension. For federal fire management services, the third party shall comply with the above stated billing requirements. The state, after ensuring that the conditions of the local agreement have been complied with, shall submit the invoice to the appropriate Federal Agency and request that payment is made directly to the third party. Upon receipt of the invoice from the state, the Federal Agency may make payment as requested. The Forest Service will not do third party payments.

H) Billing Addresses:

All bills for services provided to the EMNRD, Forestry Division will be mailed to the following address for payment:

EMNRD, Forestry Division
1220 South St. Francis Drive
P.O. Box 1948
Santa Fe, NM 87504-1948

All bills for services provided to the Forest Service and all Federal and State agencies not party to this Agreement will be mailed to the following address:

USDA Forest Service
Albuquerque Service Center
Incident Business
101B Sun Avenue, NE
Albuquerque, NM 87109

All bills for services provided to the Department of the Interior/BLM will be mailed to:

DOI Bureau of Land Management
New Mexico State Office
1474 Rodeo Road
P.O. Box 27115
Santa Fe, NM 87502-0115

All bills for services provided to the Department of the Interior/NPS will be mailed to:

DOI National Park Service
Intermountain Regional Office
12795 West Alameda Parkway
P.O. Box 25287
Denver, CO 80225-0287

All bills for services provided to the Department of the Interior/BIA Southwest Region will be mailed to:

DOI Bureau of Indian Affairs
Southwest Region
P.O. Box 26567
Albuquerque, NM 87125

All bills for services provided to the Department of Interior/BIA Navajo Region will be mailed to:

DOI Bureau of Indian Affairs
Navajo Region Branch of Fire Management
Mail Drop: 443 P.O. Box 1060
Gallup, New Mexico 87305

All bills for services provided to the Department of the Interior/Fish and Wildlife Service will be mailed to:

DOI U.S. Fish & Wildlife Service
Southwest Regional Office
500 Gold Avenue, SW
P.O. Box 1306
Albuquerque, NM 87103

All bills for services provided to the Department of Energy/Los Alamos Site Office will be mailed to:

Department of Energy
Los Alamos Site Office
Emergency Manager
P.O. Box 1663 Mailstop A316
Los Alamos, NM 87545

EXHIBIT E

**NEW MEXICO WILDLAND FIRE MANAGEMENT JOINT POWERS MASTER
AGREEMENT
COST SHARE AGREEMENT**

The purpose of this Cost Share Agreement is to provide for a coordinated cooperative fire suppression operation on this incident and to describe the cost share methodology. This Cost Share Agreement is entered into as per Section 44 of the New Mexico Wildland Fire Management Joint Powers Master Agreement.

1. Incident Name _____ Origin Date _____ Time _____

2. Township _____ Range _____ Section _____

3. Estimated Size _____ Acres at the time of this Agreement.

4. Agency _____ Fire Code _____

Agency _____ Fire Code _____

Agency _____ Fire Code _____

Agency _____ Fire Code _____

5. This Agreement becomes effective on _____ at
_____ and remains in effect until _____

or until otherwise amended or terminated.

6. Position Name Agency

Incident Commander _____

Finance Section Chief _____

7. Agency Representatives participating in development of Cost Share Agreement:

Agency _____ Agency _____

Name _____ Name _____

Title _____

Title _____

Agency _____

Agency _____

Name _____

Name _____

Title _____

Title _____

8. There are several ways to determine the best cost share mix. Below are examples of five cost share possibilities:

- A. Each Agency pays for its own resources – fire suppression efforts are primarily on jurisdictional responsibility lands.
- B. Each Agency pays for its own resources – services rendered approximate the percentage of jurisdictional responsibility, but not necessarily performed on those lands.
- C. Cost share by percentage of ownership or Agency jurisdictional responsibility.
- D. Cost is apportioned by geographic division. Examples of geographic divisions are: Divisions A and B (using a map as an attachment); privately owned property with structures; or specific locations such as campgrounds.
- E. Reconciliation of daily estimates (for larger, multi-day incidents). This method relies upon daily agreed-to cost estimates, using Incident Action Plans or other means to determine multi-Agency contributions.

The following are not reimbursable:

- responsibility for tort claims or compensation for injury costs;
- non suppression rehabilitation costs are the responsibility of the Jurisdictional Agency;
- non-expendable property purchases (are the responsibility of the Agency making the purchase); and
- support costs (*i.e.* office dispatchers, warehouse workers, etc.), unless they are charging to an emergency code assigned to the incident.

9. Fire Suppression Costs will be divided between agencies as described below:

10. This Cost Share Agreement is our best judgment of Agencies cost responsibilities for this incident on the date/time shown. Future amendments to this Cost Share Agreement may be necessary, as conditions and fire spread change. This Cost Share Agreement can be negotiated in the field but only the State Forester has the authority to enter into a cost share agreement on behalf of the EMNRD, Forestry Division.

Signature_____Signature_____

Agency_____Agency_____

Date_____Date_____

Telephone_____Telephone_____

Signature_____Signature_____

Agency_____Agency_____

Date_____Date_____

Telephone_____Telephone_____

RECEIVED

MAR 28 2013

**DFA
OFFICE OF THE SECRETARY**

SHARE No. 000...7104-01
EMNRD Contract No. 08-521-2300-0288
Department of the Interior, et al
Forest Service Agreement #08-FI-11031600-035

Amendment No. 1

**STATE OF NEW MEXICO
JOINT POWERS AGREEMENT
BETWEEN THE
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT**

AMENDMENT NO. 1

THIS AMENDMENT NO. 1 is made and entered into by and between the New Mexico Energy, Minerals and Natural Resources Department (EMNRD) Forestry Division, Agreement Number 08-521-2300-0288 and DUNS Number 808561849 and

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

New Mexico State Office, Agreement Number GDA080001
and DUNS Number 614053387

NATIONAL PARK SERVICE

Intermountain Region, Agreement Number F1250080001
and DUNS Number 10360625

BUREAU OF INDIAN AFFAIRS

Southwest Region Office, Agreement Number ~~AGM00080002~~ **A12PG00090**
and DUNS Number 178262275

and

Navajo Regional Office, Agreement Number A13PG00006
and DUNS Number
069721352

UNITED STATES FISH AND WILDLIFE SERVICE

Southwest Region, Agreement Number 201818J601
and DUNS Number 129283532

**UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE**

Southwest Region 3, Agreement Number 08-FI-11031600-035
And DUNS Number 929332484

UNITED STATES DEPARTMENT OF ENERGY

National Nuclear Security Administration, Los Alamos Site Office,
Agreement Number 3208NA28673000
and DUNS Number 002716731

WHEREAS, the parties have previously made an Agreement effective April 2, 2008, and

WHEREAS, Paragraph 66 thereof provides that the original Agreement shall not be amended except by written instrument executed by the parties, and

WHEREAS, the parties now agree that it is in their mutual interest to amend their previously made Agreement.

NOW, THEREFORE, THE PARTIES DO AGREE TO AMEND their previous Agreement by this **AMENDMENT NO. 1** as follows:

1. The existing Section 68, Duration of Agreement, is deleted in its entirety and replaced with the following:

“This Agreement shall not become effective until approved by DFA and shall remain in effect until April 1, 2016. An Agency shall have the right to terminate its participation under this Agreement by providing 90 days advance written notice to the other Agencies.”

2. The existing Exhibit B is deleted in its entirety and replaced with the attached Exhibit B.

3. The existing Subparagraph 3 in Section A, Suppression Billings of Exhibit D, New Mexico Wildland Fire Management Joint Powers Master Agreement Reimbursable billings And Payments, is deleted in its entirety and replaced with the following:

“3. **Billing Estimates and Time Frames:** Billing agencies shall submit bills in accordance with their current agency billing procedures. If the total cost of the fire is not known at the time of initial billing, a partial bill may be submitted. A final bill, so identified, shall be issued within 270 days after control of the fire. After the final billing has been sent, and if additional costs are identified, a supplemental billing may be issued if agreeable to applicable parties. This supplemental billing must be submitted within 360 days after the fire is controlled, at which time the incident is closed out.”

4. All other terms and conditions of the parties' original Agreement shall remain the same.

5. This **Amendment No. 1** shall not become effective until approved by the New Mexico Department of Finance and Administration.

DFA OFFICE OF THE SECRETARY

2015 AUG 14 PM 1:24

BATAAH BLDG. RM 160
SANTA FE, NEW MEXICO 87501

SHARE No. 000 ... 7104-02
EMNRD Contract No. 08-521-2300-0288
Department of the Interior, *et al*
Forest Service Agreement #08-FI-11031600-035

Amendment No. 2

**STATE OF NEW MEXICO
JOINT POWERS AGREEMENT
BETWEEN THE
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT**

AMENDMENT NO. 2

THIS AMENDMENT NO. 2 is made and entered into by and between the New Mexico Energy, Minerals and Natural Resources Department (EMNRD) Forestry Division, Agreement Number 08-521-2300-0288 and DUNS Number 808561849 and

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

New Mexico State Office, Agreement Number GDA080001
and DUNS Number 614053387

NATIONAL PARK SERVICE

Intermountain Region, Agreement Number F1250080001
and DUNS Number 10360625

BUREAU OF INDIAN AFFAIRS

Southwest Region Office, Agreement Number A12PG00090
and DUNS Number 178262275

And

Navajo Regional Office, Agreement Number A13PG00006
and DUNS Number 069721352

UNITED STATES FISH AND WILDLIFE SERVICE

Southwest Region, Agreement Number 201818J601
and DUNS Number 129283532

**UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE**

Southwest Region 3, Agreement Number 08-FI-11031600-035
and DUNS Number 929332484

UNITED STATES DEPARTMENT OF ENERGY

National Nuclear Security Administration, Los Alamos Field Office,
Agreement Number 3208NA28673000
and DUNS Number 002716731

WHEREAS, the parties have previously made an Agreement effective April 2, 2008, and amended on April 5, 2013, and

WHEREAS, Paragraph 66 thereof provides that the original Agreement shall not be amended except by written instrument executed by the parties, and

WHEREAS, the parties now agree that it is in their mutual interest to amend their previously made Agreement.

NOW, THEREFORE, THE PARTIES DO AGREE TO AMEND their previous Agreement by this **AMENDMENT NO. 2** as follows:

1. The existing Section 68, Duration of Agreement, is deleted in its entirety and replaced with the following:

"This Agreement shall not become effective until approved by DFA and shall remain in effect until April 1, 2017. An Agency shall have the right to terminate its participation under this Agreement by providing 90 days advance written notice to the other Agencies."

2. The existing Exhibit B is deleted in its entirety and replaced with the attached Exhibit B.

3. All other terms and conditions of the parties' original Agreement shall remain the same.

4. This **Amendment No. 2** shall not become effective until approved by the New Mexico Department of Finance and Administration.

**STATE OF NEW MEXICO
JOINT POWERS AGREEMENT
BETWEEN THE
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

AMENDMENT NO. 3**

THIS AMENDMENT NO. 3 is made and entered into by and between the New Mexico Energy, Minerals and Natural Resources Department (EMNRD) Forestry Division, Agreement Number 08-521-2300-0288 and DUNS Number 808561849 and

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

New Mexico State Office, Agreement Number GDA080001
and DUNS Number 614053387

NATIONAL PARK SERVICE

Intermountain Region, Agreement Number F1250080001
and DUNS Number 10360625

BUREAU OF INDIAN AFFAIRS

Southwest Region Office, Agreement Number A12PG00090
and DUNS Number 178262275

And

Navajo Regional Office, Agreement Number A13PG00006
and DUNS Number 069721352

UNITED STATES FISH AND WILDLIFE SERVICE

Southwest Region, Agreement Number 201818J601
and DUNS Number 129283532

**UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE**

Southwest Region 3, Agreement Number 08-FI-11031600-035
and DUNS Number 929332484

UNITED STATES DEPARTMENT OF ENERGY

National Nuclear Security Administration, Los Alamos Field Office,
Agreement Number 3208NA28673000
and DUNS Number 002716731

WHEREAS, the parties have previously made an Agreement effective April 2, 2008, and amended on April 5, 2013, and amended on August 22, 2015, and

WHEREAS, Paragraph 66 thereof provides that the original Agreement shall not be amended except by written instrument executed by the parties, and

WHEREAS, the parties now agree that it is in their mutual interest to amend their previously made Agreement.

NOW, THEREFORE, THE PARTIES DO AGREE TO AMEND their previous Agreement by this **AMENDMENT NO. 3** as follows:

1. The existing Section 68, Duration of Agreement, is deleted in its entirety and replaced with the following:

"This Agreement shall not become effective until approved by DFA and shall remain in effect until April 1, 2018. An Agency shall have the right to terminate its participation under this Agreement by providing 90 days advance written notice to the other Agencies."

2. All other terms and conditions of the parties' original Agreement shall remain the same.

3. This **Amendment No. 3** shall not become effective until approved by the New Mexico Department of Finance and Administration.

EXHIBIT B

**NEW MEXICO WILDLAND FIRE MANAGEMENT
JOINT POWERS MASTER AGREEMENT
PRINCIPAL CONTACTS**

PRINCIPAL PROJECT CONTACTS. The principal project contacts for this instrument are as follows. These points of contact shall review this Agreement at least annually.

BUREAU OF LAND MANAGEMENT

Hector Madrid
State Fire Management Officer
301 Dinosaur Trail
Santa Fe, NM 87508
Phone: 505-438-7430
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BUREAU OF INDIAN AFFAIRS

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Regional Fire Management Officer
PO Box 1060
Gallup, NM 87301
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Fax: 928-729-5029
Email: dale.glenmore@bia.gov

NATIONAL PARK SERVICE

Brett Woffinden
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Santa Fe, NM 87504
Phone: 505-988-6018
Fax: 505-988-6045
Email: brent_l_woffinden@nps.gov

U.S. FISH AND WILDLIFE SERVICE

Southwest Region
Loren DeRosier
Fire Management Coordinator
PO Box 1306
Albuquerque, NM 87103
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Fax: 505-248-6425
Email: loren_derosier@fws.gov

BUREAU OF INDIAN AFFAIRS

Southwest Regional Office
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Fire Management Officer
1001 Indian School Road NW
Albuquerque, NM 87104
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FOREST SERVICE

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Albuquerque, NM 87102
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Fax: 505-842-3806
Email: bzamora@fs.fed.us

U.S. DEPARTMENT OF ENERGY

NNSA/Los Alamos Field Office
Bill Gentile
Emergency Management Program
Manager
PO Box 1663 mailstop A316
Los Alamos, NM 87454
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EMNRD

Forestry Division
Robert Morales
State Fire Management Officer
1220 S St Francis Drive
Santa Fe, NM 87505
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Email: robert.morales@state.nm.us

Los Alamos National Laboratory

Manny L'Esperance
Wildland Fire Program Manager
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Fax: 505-665-0679
Email:mannyl@lanl.gov