

## **D. MUTUAL AID**

### **1. OVERVIEW**

The State Fire Marshal encourages Oregon departments that respond outside their jurisdictions to enter into formal mutual aid agreements.

ORS 190.010 authorizes local governments to enter into agreements with neighboring governmental entities for the performance of any and all functions which the parties to the agreement are authorized to perform.

In accordance with this statute, fire service districts enter into mutual aid agreements for services, including emergencies which have the potential to overwhelm the resource capabilities within a single district. These agreements are integral parts of the *Mobilization Plan* as administered by the Office of State Fire Marshal.

The model mutual aid agreement which follows is intended as a basis to develop agreements between local fire service districts. While the model encourages uniformity of agreements throughout the state, local agencies may revise it to meet their specific needs.

The model in no way invalidates mutual aid agreements already in existence. Rather, it is a tool to assist in the development of future agreements.

### **2. MODEL MUTUAL AID AGREEMENT**

**MODEL MUTUAL AID AGREEMENT**

*(Model only; may be revised to meet local needs)*

**1.0 INTRODUCTION**

WHEREAS, certain disasters have the potential of outstripping the capacity of any community to effectively protect life and property,

WHEREAS, the parties desire to combine and coordinate their resources for responses to disasters occurring in their jurisdictions,

NOW, THEREFORE, under the authority of ORS Chapter 190, it is agreed between the parties as follows:

This Agreement shall be effective on the date signed by all parties, and shall be effective as to each additional party as provided in Section 18 of this Agreement, and is entered into for the purpose of securing to each party periodic emergency assistance for response to emergencies resulting from any cause.

**2.0 AUTHORITY**

This Agreement is entered into under the authority granted to the parties by their respective charters and/or Oregon Revised Statutes (ORS). Further, ORS 190.010 authorizes units of local government to enter into written agreements with any other units of local government for the purpose of any and all functions and activities that the parties to the agreement, its officers or agencies, have authority to perform, and ORS 190.010 authorizes units of state and local governments to enter into agreements with each other to cooperate in the performance of their duties. Additionally, ORS Chapters 453, 476 and 401 authorize the State Fire Marshal and the Administrator of the Oregon Emergency Management to develop comprehensive statewide plans for the protection of life and property during disasters. This Agreement is intended to be consistent with, and supportive of, such state contingency plans.

### 3.0 SCOPE OF AGREEMENT

This Agreement, being in conformance with the *Oregon Fire Service Mobilization Plan* as adopted by the State Fire Marshal, shall include the following types and kinds of mutual aid assistance, and operating terms and conditions.

3.1 TYPE OF EQUIPMENT AND PERSONNEL. The parties hereto agree to provide to all other parties to this Agreement personnel and equipment as described in Attachment “A” which is incorporated herein by this reference. Further, the parties hereto recognize and agree that such personnel and equipment shall be periodically unavailable under this Agreement due to normal operating requirements. However, when any significant change occurs to the available equipment and/or personnel which shall last more than thirty (30) days, the party experiencing such change shall notify all other parties to this Agreement.

3.2 GOOD FAITH. Each of the parties hereto agrees to attempt to furnish to a requesting party such assistance as the requesting party may deem reasonable and necessary to successfully abate an emergency in the requesting party’s jurisdiction. Provided, however, that the party to whom the request is made shall have sole discretion to refuse such request if sending such assistance may lead to an unreasonable reduction in the level of protection within its jurisdiction, and provided further that a state or local agency may refuse a request for assistance if necessary to comply with any limitations on the use of dedicated funds by that agency.

3.3 DISPATCHING. It is agreed by the parties hereto that mutual aid assistance, when to be sent, shall be dispatched promptly and that first response by the jurisdiction requesting assistance shall not be a prerequisite to a request for assistance under this Agreement.

- 3.4 SUPERVISION. When personnel and/or equipment are furnished under this Agreement, the agency having incident command responsibility for the incident shall have overall supervision of mutual aid personnel and equipment during the period such incident is still in progress. Provided, however, when officers from the requesting jurisdiction have not arrived at the scene of the incident, the commanding officer of the jurisdiction arriving first to provide mutual aid assistance shall be in command of the incident until relieved. Further, “supervision” as used in this section refers to conduct of the mission. Each person participating in the mission remains an employee of that person’s employing agency and is subject to the personnel policies solely of that employing agency.
- 4.0 WAIVERS
- 4.1 GENERAL WAIVERS. Each party to this Agreement waives all claims against all other parties to this Agreement for compensation for any loss, damage, personal injury, or death occurring to personnel and/or equipment as a consequence of the performance of this Agreement.
- 4.2 HOLD HARMLESS. Any requesting party shall, to the extent permitted by any applicable constitutional or Tort Claims Act limitation, save and hold harmless any responding party against any and all claims or actions brought against the responding party, arising out of the responding party’s efforts, except to the extent that such claims or actions arise out of any willful misconduct or grossly negligent action on the part of the responding party.
- 4.3 WORKERS’ COMPENSATION. Each party to this Agreement agrees to provide workers’ compensation insurance coverage to each of its employees and volunteers, and responding under this agreement recognizes that although overall incident command supervision will usually be provided by the jurisdiction in which the incident occurs, supervision of individual employees will be provided

by their regular supervisors. The intent of this provision is to prevent the creation of “special employer” relationships under Oregon workers’ compensation law.

#### 5.0 REFUSALS TO PERFORM

This is a mutual aid agreement and it is assumed that all available assistance will generally be provided. Nothing, however, in this Agreement shall be construed to prevent a party to whom a request for assistance is made from refusing to respond when that is appropriate in its sole determination.

In addition, any responding party may refuse to perform any specific task when, in the sole determination of the responding party’s commanding officer, response would create an unreasonable risk of danger to the responding party’s employees and/or equipment or any third party.

#### 6.0 COMPENSATION

The parties agree that the personnel and equipment available under this agreement are roughly equivalent and agree that the availability and provision of such constitute consideration under this agreement.

#### 7.0 TERMINATION

Any party hereto may terminate this Agreement at any time by giving thirty (30) days’ notice of the intention to do so to any and all other parties. Such notice shall be sent to the governing body of the other parties and a copy thereof to the chief of the department of the parties notified. This agreement will remain in effect so long as there are at least two parties remaining.

#### 8.0 EXTRA JURISDICTIONAL OPERATING AUTHORITY

The parties hereto recognize and agree that ORS Chapters 190, 453, and 476 extend the powers and authorities of the parties herein beyond their regular jurisdictions when operating under this Agreement.

#### 9.0 COST RECOVERY

The parties hereto agree that any cost recovery actions brought by responding jurisdictions under this Agreement against third parties shall be coordinated by the jurisdiction in which the incident giving rise to the response occurred.

#### 10.0 RETIREMENT SYSTEM STATUS

The parties hereto recognize and agree that under this Agreement public employee retirement benefits and social security benefits accrue in the manner prescribed by the employee's regular employment and are the responsibility of the regular employer as if the employee were performing the employee's regular duties. No additional benefits arise due to participation in assistance under this Agreement.

#### 11.0 ASSIGNMENTS/SUBCONTRACTS

Except as expressly provided herein, the parties hereto recognize and agree not to assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Agreement, in whole or in part, without the prior written approval of the other parties hereto.

#### 12.0 SUCCESSORS IN INTEREST

The provisions of this Agreement shall be binding upon and inure to the benefit of all other parties to the Agreement and the respective successors and assigns.

#### 13.0 COMPLIANCE WITH GOVERNMENT REGULATIONS

Each party to this Agreement agrees to comply with federal, state and local laws, codes, regulations, and ordinances applicable to the work performed under this Agreement.

#### 14.0 FORCE MAJEURE

No party to this Agreement shall be held responsible for delay or default caused by fires, riots, acts of God and/or war which is beyond the reasonable control of the parties.

#### 15.0 SEVERABILITY

If any provision of this Agreement is declared by a court having jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

#### 16.0 AMENDMENTS

The terms and conditions of this Agreement shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever without prior written approval of the parties hereto.

#### 17.0 DISPUTE RESOLUTION

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon as interpreted by the Oregon courts. However, the parties may attempt to resolve any dispute arising under this Agreement by any appropriate means of dispute resolution, except binding arbitration.

#### 18.0 SIGNATURES

The undersigned warrant and represent that they are duly authorized to bind the agency represented by the undersigned as a party to this Agreement, and that the agency represented by the undersigned as a party to this Agreement, and that the agency represented by the undersigned is authorized to participate in and carry out the functions required by this Agreement.

All signatures shall be executed in counterparts, using the form appearing on the next page hereto or another substantially in that form.

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**SIGNATURE PAGE FOR MUTUAL AID AGREEMENT**

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PARTICIPATING AGENCY

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NAME AND TITLE

---

SIGNATURE

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DATE

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PARTICIPATING AGENCY

---

NAME AND TITLE

---

SIGNATURE

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DATE

[Add signature blocks as needed]