

**Clackamas County Mutual Aid Agreement**  
2004  
DRAFT

**1. Introduction**

This agreement shall be known as the 2004 Clackamas County Mutual Aid Agreement and shall supersede all previous agreements. This document has been adopted by resolution of the participating agencies for the purpose of securing to each the benefits of mutual aid in performing the function normally requested of a fire department in protecting life and property from fire and other natural or man-made emergencies.

This Agreement does NOT supersede or repeal any automatic aid agreements or pre-programmed first response agreements, hazardous materials response agreements as set forth in paragraph 18, mutual aid hazardous materials agreements with other State Response Teams, equipment sharing agreements, such as Nuclear, Biological and Chemical agreements with the City of Portland, or emergency planning agreements, such as the Office of Consolidated Emergency management Cooperative Assistance Agreement. The parties to this Agreement hereby repeal all other Mutual Aid Agreements and Mutual Assistance Agreements.

**2. 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 function 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 authorizes the State Fire Marshal and the Administrators 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. 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 **Equipment and Personnel. Minimum Requirements.** Subject to the provision of paragraph 5.0, personnel and equipment available for assistance pursuant to this agreement shall comply with standards set by the Fire Defense Board. Agency fire chiefs shall provide their counterparts with written notice of any major changes in the availability of personnel and equipment.
- 3.2 **Good Faith.** Each of the parties hereto agrees 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 in its sole discretion, the ability 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. **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, 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.** In order to prevent the creation of "special employer" relationship under Oregon Worker's Compensation Laws, each party to this Agreement agrees to provide workers' compensation insurance coverage to each of its employees and Volunteers.

#### 5. **Refusal 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. 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. 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 being 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 to it.

**8. 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. 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. Retirement System**

The parties hereto recognize and agree that under this Agreement public employee retirement system 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. Assignment/Subcontractors**

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. Fire Defense District Mutual Aid Agreements.** Each of the parties to this Agreement hereby authorize the Clackamas County Fire Defense District to enter into mutual aid

agreements with adjacent Fire Defense Districts. Upon exercise of a mutual aid agreement with another Fire Defense District, and notification to the fire chiefs of the undersigned parties, the parties agree to comply with the direction of the Clackamas County Fire Defense District Fire Chief under the protocols adopted by the Clackamas County Fire Defense District Board, and to provide assistance to the parties of the adjacent Fire Defense District.

**13. 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.

**14. 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.

**15. 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.

**16. Severability**

If any provision of this Agreement is declared by a court 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.

**17. 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.

**18. 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.

**19. Emergency Conflagration Act or Hazardous Materials Incident Response**

It is further agreed that aid and assistance given under order of the Administrator of the State Emergency Management Division in the event of the emergency proclamation by the Governor, or under the "Emergency Conflagration Act;" or response to hazardous material incident pursuant to the terms of a contract with the Office of the Oregon State

Fire Marshal and in conformance with administrative rules regarding hazardous materials response promulgated by the Office of the Oregon State Fire Marshal and the State of Oregon shall not be governed by this agreement.

## **20. Operations of the Clackamas County Fire Defense Board**

The member agencies of the Clackamas District Fire Defense Board agree to the conditions that follow in preparation for large scale emergencies, or simultaneous emergencies, requiring the utilization of multi-jurisdictional forces for containment, suppression, or mitigation.

20.1 The Clackamas District Fire Defense Board shall function as an active body under bylaws and rules as are necessary and adopted by it. It shall select a Fire Defense Chief for taking official action under the terms of the Oregon Fire Service Plan.

20.2 The Fire Defense Chief, or any member of the Fire Defense Board assuming the duties of the Fire Defense Chief, may also be called upon to staff the Clackamas County Emergency Operation Center to represent fire jurisdiction interests in incident mitigation.

20.3 The Fire Defense Chief, or any member of the Fire Defense Board assuming the duties of the of the Fire Defense Chief, has the authority to prioritize incidents in the event of a regional incident or simultaneous multiple incidents within the County.

## **21. Signatures**

The undersigned warrant and represent that they are duty authorized to bind 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.

Signatures Page for Mutual Aid Agreement

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Participating Agency

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Name and Title

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Signature

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Participating Agency

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Name and Title

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Signature

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Participating Agency

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