

**APPENDIX F****OREGON US&R MUTUAL AID AGREEMENT****INTRODUCTION**

WHEREAS, certain disasters have the potential of outstripping the capacity of any community to effectively mitigate structural collapse and confined space emergencies, and;

WHEREAS, the parties desire to combine and coordinate resources for responses to such disasters occurring in the State of Oregon,

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 at least two 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 structural collapse and confined space 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 190.110 authorizes units of state and local governments to enter into agreements with each other to cooperate in the performance of their duties. Additionally, ORS 401.270 authorizes the Director of the Office of Emergency Management to develop comprehensive statewide plans for the protection of life and property during disasters, and ORS 401.480 authorizes state and local governments to enter into cooperative assistance agreements with public and private agencies for reciprocal emergency aid and resources. 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 US&R trained and certified personnel and US&R equipment if available 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 US&R assistance as the requesting party may deem reasonable and necessary to successfully abate a US&R 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 US&R 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 INCIDENT COMMAND SYSTEM. The parties hereto agree that they shall operate in conformance with the State of Oregon incident command system as adopted by the Oregon State Fire Marshal and the Oregon Fire Chiefs' Association for the operation of the Oregon Fire Service Mobilization Plan. Such incident management shall include record keeping functions so as to document all activities performed under this Agreement including, but not limited to, the scope and extent of personnel and equipment committed, operating times, out-of-pocket expenses, and other costs which, but for the response under this Agreement, would not have otherwise been incurred.

3.5 SUPERVISION. When US&R 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 US&R 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 US&R mission. Each person participating in the US&R 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 responding under this agreement, and 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 worker 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 to it.

## 8.0 EXTRA JURISDICTIONAL OPERATING AUTHORITY

The parties hereto recognize and agree that ORS Chapters 190, and 401 extend the powers and authorities of the Oregon local government parties herein beyond their regular jurisdictions when operating under and within the scope of this Agreement.

## 9.0 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.

## 10.0 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.

## 11.0 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.

## 12.0 COMPLIANCE WITH GOVERNMENT REGULATIONS

Each party to this Agreement agrees to comply with all applicable federal, state and local laws, codes, regulations, and ordinances applicable to the work performed under this Agreement. The following provisions of the Oregon Revised Statutes, as applicable, are hereby incorporated by this reference: ORS 279.312, 279.314, 279.316 and 279.320.

## 13.0 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.

## 14.0 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.

## 15.0 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. The exclusive venue for any litigation arising under this Agreement shall be in the Circuit Court of the State of Oregon. The parties expressly waive any and all rights to maintain an action under this Agreement in any other venue and expressly consent that, upon motion of any party, any case may be dismissed or its venue transferred, as appropriate, so as to effectuate the choice of venue made in this section. However, the parties may attempt to resolve any dispute arising under this Agreement by any appropriate means of dispute resolution, except binding arbitration.

16.0 GOVERNANCE

The parties agree to participate in a system of governance for the Oregon US&R Task Force as described in Attachment B, which is incorporated herein by this reference, or upon notice to the parties, as the governing board amends its process from time to time.

17.0 TRAINING

Members will demonstrate good faith effort to participate in team training with minimum participation to be established by the Board. Only members who consistently participate in team training will be eligible for deployment.

18.0 ADDITIONAL PARTIES

Agencies may be added to this Agreement by submitting a signed signature page to the Oregon State Fire Marshal. The Agency shall become a party to this agreement upon execution of the signature page by the Oregon State Fire Marshal. The Oregon State Fire Marshal shall notify all parties when new agencies are added.

19.0. 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 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.

SIGNATURE PAGE FOR OREGON URBAN SEARCH AND RESCUE (US&R) TASK FORCE MUTUAL AID AGREEMENT

PARTICIPATING AGENCY

SIGNATURE

TITLE

DATE

State of Oregon, ACTING BY AND THROUGH THE DEPARTMENT OF STATE POLICE, OFFICE OF STATE FIRE MARSHAL

STATE FIRE MARSHAL

DATE

GENF8941.DOC