

**INTERGOVERNMENTAL AGREEMENT BETWEEN ESTACADA FIRE
DISTRICT #69 and CLACKAMAS FIRE DISTRICT #1 FOR
FIRE PROTECTION AND EMERGENCY MEDICAL SERVICES,
THE TRANSFER OF ESTACADA EMPLOYEES, AND
LEGAL INTEGRATION**

This Intergovernmental Agreement (Contract for Service) is entered into by and between Estacada Fire District #69 ("EFD") and Clackamas Fire District #1 ("DISTRICT") pursuant to ORS Chapter 190. It supersedes all other existing agreements for services between the parties. This Intergovernmental Agreement (the "Agreement") is entered into under the authority granted to the parties by ORS 190, which 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.

The parties agree as follows:

1. Term and Legal Integration Vote. The term of this Agreement is 18-months, beginning on the 1st day of January 2020, and terminating on the 30th day of June 2021. The governing bodies agree to refer a legal integration vote to the electors in November 2020 in the form of a merger resolution and referral.

2. Scope of Services. DISTRICT agrees to provide fire protection, fire prevention, emergency medical services and other services to EFD generally consistent with the services currently provided within the DISTRICT ("Services"). However, in providing Services, the DISTRICT will assign priority to the Services by taking into consideration both Parties' environment, timelines, and needs, as well as the DISTRICT's own obligations, policies and procedures, as they may be changed from time to time. The Parties will discuss timelines prior to initiating Services under this Agreement. DISTRICT agrees to:

- A. Provide fire protection and emergency medical services throughout EFD boundaries in a manner consistent with this Agreement and within the staffing guidelines established in Appendix 'A', including the use of the DISTRICT'S vehicles, equipment, apparatus and sufficient personnel to operate the vehicles, equipment and apparatus. These Services shall be provided subject at all times to the DISTRICT's priorities and needs to assure adequate fire protection and emergency medical services to the DISTRICT. Under this condition, if the demands of EFD exceeds the DISTRICT's capability to provide Services under this Agreement the DISTRICT agrees to use mutual aid agreements as may be necessary to supplement the DISTRICT'S vehicles, equipment, apparatus and personnel.
- B. Use due diligence to maintain continuous (twenty-four hours per day, seven days per week) fire protection and emergency medical services, which shall at least be consistent with Appendix A. Subject at all times to the Indemnification and Insurance provisions herein, under no circumstances is the DISTRICT liable to

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- EFD for an interruption or failure of service caused by acts of God, unavoidable accident, or other circumstances beyond the control of the DISTRICT
- C. Provide oversight of all Administrative functions of EFD.
 - D. Staff EFD Station 330 with a combination of career and support volunteer personnel, Provide EFD Station 333 with volunteer personnel and DISTRICT will provide 24-hour Chief Officer coverage to EFD all in accordance of Appendix A.
 - E. Review building and construction plans for compliance with applicable fire codes and ordinances within EFD.
 - F. Investigate fires within EFD.
 - G. Review and propose fire codes and ordinances for adoption by EFD and perform fire inspections.
 - H. Enforce applicable fire codes, ordinances, regulations, policies / procedures and statutes.
 - I. Conduct fire prevention and education programs within EFD including civic group participation, presentations at schools, and other community events. These programs and activities will be consistent with current DISTRICT programs.
 - J. Maintain, for EFD, adequate records of activities as may be required by the Insurance Services Office and the Oregon State Fire Marshal.
 - K. Provide Emergency Medical Services (EMS) oversight to include training, quality assurance, quality improvement, recertification, pilot projects, research, medical direction, and other EMS activities as determined by the DISTRICT and the DISTRICT's designated Medical Director and staff.
 - L. Provide Information Technology (IT) services in accordance with DISTRICT policies, practices, and procedures.
 - M. Participate in mutual aid agreements with fire protection providers that are contiguous with EFD, establish, and maintain automatic aid agreements.
 - N. Provide emergency management planning for EFD and shall commit command staff to emergency operations center / fire operations center when activated. Such participation shall include cooperation in emergency preparedness exercises at least annually to test EFD's emergency management plan.
 - O. Provide Financial Management functions to EFD as currently provided to the DISTRICT. Also, a copy of the complete annual budget and audit (including the management letter) of the DISTRICT shall be provided to EFD.

- P. Administer and coordinate the volunteer program and volunteer operations including the distribution of volunteer reimbursement and benefits, oversee EFD's relationship with the Volunteer Association, coordinate staffing, recruitment, training, and program reporting. The DISTRICT will follow all current IRS accountable plan regulations.
 - Q. Provide Wellness Services for all career and volunteer personnel.
 - R. Provide Training for all career and volunteer personnel.
 - S. Provide Logistics Service in accordance with DISTRICT purchasing, procurement, distribution, and surplus policies and procedures.
 - T. Provide to EFD Fleet Maintenance Services for all apparatus and vehicles. The DISTRICT will maintain EFD apparatus and equipment to the same standard as used by the DISTRICT. EFD and the DISTRICT shall agree to a fleet plan that establishes an Apparatus and Equipment Reserve Fund for apparatus and vehicle replacement in accordance with established DISTRICT practices. The DISTRICT will manage and report financial management of this fund in accordance with the scope of services.
 - U. Provide to EFD Facility Maintenance Services for all stations to include the training tower and auxiliary buildings. The DISTRICT shall maintain EFD's facilities in a state of good repair. The DISTRICT shall pay for all utilities for the EFD facilities. EFD and the DISTRICT shall agree to establish a Land and Facilities Reserve Fund for capital maintenance/replacement needs, which EFD will fund. The DISTRICT will manage, expend and report financial management of this fund in accordance with scope of services.
 - V. DISTRICT shall not be required to duplicate those efforts or services regularly provided by other governmental agencies nor shall the DISTRICT be required to provide any services, which are or are hereafter specifically reserved by law for any other governmental agency.
 - W. Provide EFD with regular reports and evaluations of the Services under this agreement.
 - X. Inform EFD of all new developments, issues, or concerns affecting the operations of the EFD. EFD shall notify the DISTRICT of any developments or issues concerning the Agreement in advance of any public announcement on the subject.
3. Compensation.
- A. EFD agrees to pay the DISTRICT ONE MILLION, FOUR HUNDRED AND FIFTY EIGHT THOUSAND, AND TWO HUNDRED FIFTY SIX DOLLARS (\$1,458,256) for the Services provided from the time period beginning January 1,

- 2020 until June 30, 2020. EFD also agrees to pay the DISTRICT, TWO MILLION, EIGHT HUNDRED SIXTY FIVE THOUSAND AND NINE HUNDRED AND FOURTY ONE DOLLARS (\$2,865,941) for the Services provided from the time period beginning July 1, 2020 until June 30, 2021.
- B. EFD agrees to pay the DISTRICT the amount set forth in Section 3.A in equal monthly installments payable on the 1st day of each month beginning January 1, 2020.
 - C. The DISTRICT will assist EFD to levy taxes within applicable constitutional limits during the term of this Agreement sufficient to provide the payments required to be made to the DISTRICT during this Agreement in accordance with scope of services.
 - D. None of the provisions of this Agreement shall be construed to create for either party any right, interest, or ownership in any real or personal property of the DISTRICT used for the performance of this Agreement unless agreed to.
 - E. If, during the term of this Agreement the taxing authority of the DISTRICT and / or EFD is limited by a State-wide ballot measure, Legislative action, a Court decision, any other reason, and if, as a result of the tax limitation, the DISTRICT is unable to provide the level of service described in Section 2 above, or if EFD is unable to pay DISTRICT for the established levels of service, the parties agree to renegotiate this agreement in good faith or to agree to an earlier termination of this agreement.
 - F. EFD agrees to appropriate funds to pay the contract fee in a timely manner. If EFD fails at any time to appropriate the funds necessary for this Agreement, this agreement will terminate upon not less than thirty (30) days written notice from DISTRICT notwithstanding the provisions of Section 12.
 - G. The DISTRICT will manage all grants on behalf of EFD. EFD agrees to allow the DISTRICT to apply for grants and other sources of revenue on EFD's behalf and any grants awarded may be used for the DISTRICT'S implementation of this agreement or for other EFD purposes. The DISTRICT will discuss the need for matching funds, performance expectations and management of grants with EFD prior to submission of grant.
4. Financial Review. Each year, the DISTRICT will review the costs of performing this agreement to protect against cost shifting between agencies. The District will produce a report to the elected officials of both EFD and the DISTRICT that describes the outcome of the financial review. Amendments and modifications regarding the contract costs may be negotiated based on financial reviews provided. Notwithstanding the forgoing, the annual increase in the contract fee set forth in Section 3.A will be automatic.

5. Legal Advice. Each Party shall consult their own respective legal counsel, as they deem necessary. For actions involving both jurisdictions each Party's attorneys may collaborate as appropriate. Cost of their respective counsel will be borne by the respective agency.

6. Employees. All 10 current full-time employees of EFD shall transfer to DISTRICT effective January 1, 2020 and shall become full-time employees of DISTRICT. Employees' transfer rights will be determined per ORS 236.605 to 640 and the terms of any applicable collective bargaining agreement. Before transfer, the DISTRICT and EFD will ensure those employees have met all medical, fitness and other requirements as determined by the DISTRICT. Any EFD employee who does not successfully complete those requirements will be required to comply with DISTRICT requirements, policies and procedures at the time set by the DISTRICT. Failure to meet the DISTRICT'S requirements may affect that EFD employee's position on transfer or may be cause not to transfer the employee.

- A. The transferred employees will be subject to the DISTRICT salary scale and appropriate labor agreement, except that a transferred employee will not have their salary reduced below their EFD salary as of the date of transfer for the first twelve months of DISTRICT employment. Following expiration of the twelve-month period, the transferred employee will be placed at the closest salary for the position as designated under the DISTRICT salary schedule or labor agreement.
- B. The transferred employees shall be subject to all DISTRICT work standards, policies, and procedures and the applicable DISTRICT collective bargaining agreement as of the date of transfer. The transferred employees shall maintain their EFD date of hire (seniority) for purposes of determining benefits, layoffs, and leave accrual, except that no DISTRICT employee shall be demoted or laid off by reason of that seniority at the time transfer occurs.
- C. At the time of transfer, a transferred EFD employee shall:
 - 1) Retain any accrued sick leave;
 - 2) Retain up to 96 hours accrued vacation leave

- D. On the date of transfer, EFD shall pay each employee for any accrued vacation leave that is not retained by the employee and transferred to the DISTRICT.
 - E. Following the date of transfer, a transferred employee will accrue and be granted leave according to the rules of the DISTRICT or any applicable DISTRICT collective bargaining agreement.
 - F. Following the date of transfer, transferred EFD employees will be subject to the same privileges, including benefits, hours, and conditions of employment, and will be subject to the same regulations, as other DISTRICT employees.
 - G. Allocation of PERS Liability / Assets pursuant to ORS 236.610(7) and 238.231. The Public Employees Retirement System ("PERS") employer actuarial liabilities and assets of the transferred employees shall remain the responsibility of EFD. For the purposes of this section, "PERS employer actuarial assets" and "PERS employer actuarial liabilities" have the meanings set forth in Oregon Administrative Rule 459-009-0350.
 - H. If a majority of both districts' electors fail to approve a legal integration, any employees or volunteers transferred under this Agreement shall be subject to ORS 236.640, which provides a right of return to the original employer if the employee so desires.
7. Volunteers. All current and qualified fire service volunteers of EFD shall transfer to the DISTRICT effective January 1, 2020. All current fire service volunteers of EFD will be classified as either suppression or support. Before transfer, the DISTRICT and EFD will ensure those volunteers have met all medical, fitness and other requirements as determined by the DISTRICT. Any volunteer who does not successfully complete those requirements will be required to comply with DISTRICT policies and procedures to improve their medical / fitness condition in order to satisfy DISTRICT requirements. Failure to meet the DISTRICT'S requirements may affect that EFD volunteer's position on transfer or may invalidate the transfer.
8. Facilities and Equipment.
- A. Facilities and Equipment: Fire protection and emergency medical services facilities and equipment owned by EFD shall be available for the use of the DISTRICT during the term of this Agreement without charge. EFD shall retain ownership of all facilities and equipment owned by EFD and shall pay for capital improvements as determined by DISTRICT standards. If EFD decides to sell or transfer ownership of fire equipment or apparatus or any other facility or equipment of EFD that the DISTRICT uses to perform this agreement, EFD shall offer the DISTRICT a right-of-first-refusal to purchase all such facilities and equipment. EFD shall give the DISTRICT not less than 30 days prior written notice of EFD's intent to dispose of any such property and DISTRICT shall have

not less than 60 days from the receipt of EFD's notice of intent to dispose to respond in writing regarding whether it wishes to exercise its right of first refusal.

- 1) Prior to January 1, 2020, the DISTRICT and EFD will develop a plan for long-term ownership and or replacement plan of fire apparatus and equipment owned by EFD. The DISTRICT and EFD will agree on an amount, as budgeted funds allow, that EFD will annually transfer to an Apparatus and Equipment Reserve Fund. The DISTRICT will manage and report financial management of this fund in accordance with scope of services. Expenditures from the Apparatus and Equipment Reserve Fund will be jointly agreed upon by EFD and the DISTRICT.
- 2) The DISTRICT agrees to provide management of the EFD fire stations, including scheduling community rooms and ensuring that the community rooms are regularly available per DISTRICT Standard Operating Procedures.
- 3) Prior to January 1, 2020, the DISTRICT and EFD will develop an agreed upon inventory list of all EFD assets and determine age, condition and value at time of inventory.

B. Emergency Communications. DISTRICT shall pay for EFD's subscription and dispatch costs related to fire service communication and 800 MHz radio fees.

C. Insurance. DISTRICT shall pay for property insurance for all of the facilities, equipment and apparatus owned by EFD.

D. Identity. The DISTRICT will maintain the identity of vehicles and apparatus assigned to EFD stations. The DISTRICT shall identify that it serves EFD on apparatus, in promotional, website, social media, and educational materials.

9. Joint Oversight Review. A committee composed of five representatives—two elected representatives from EFD, two elected representatives from the DISTRICT, and the DISTRICT Fire Chief or designee—shall jointly consider the services provided, policy development, budget development, and financial aspects of the Agreement. The Joint Oversight Committee shall meet at least monthly for the first 6-months of the agreement and quarterly thereafter. Each party's Joint Oversight Committee members shall serve as liaisons to the other party's governing body. The liaisons will be allowed to participate in work session discussions of each party's governing body.

10. Planning, Coordination, and Legal Integration.

A. Planning Coordination. EFD and the DISTRICT agree to cooperate in good faith as described in Oregon Revised Statutes Chapter 195. The DISTRICT will participate in all comprehensive planning, plan amendments, and amendments to land-use regulations within EFD.

B. Legal Integration.

- 1) The DISTRICT and EFD will work towards Legal Integration in the form of a Merger by submitting a vote to the electors at the November, 2020 election. If the Merger is approved by a majority vote of the DISTRICT and EFD electors, the Parties agree as follows:
- 2) Both boards will follow ORS statutes to complete the Merger process.
- 3) Subject to ORS 198, if a majority vote supports a Merger, Clackamas will retain all five positions on the new Board. Qualified electors of both districts (including qualified Estacada Board members and residents) will be eligible to apply for the eligible positions #2 & #4 vacancies in the May 2021 election.
- 4) The 2015 DISTRICT general obligation bond payment obligations will not affect or be charged to Estacada taxpayers.

11. Hold Harmless and Insurance.

- A. Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, and the Oregon Constitution, EFD and the DISTRICT shall mutually hold each other harmless and indemnify each other, their respective Directors, employees, volunteers and authorized agents, all of whom were acting within the proper scope of their authority, against any and all costs, claims, actions, damages, losses and expenses (including all attorney(s) fees and costs), arising out of or related to the provision of the Services under this Agreement. Notwithstanding the immediately preceding, neither Party nor any elected and appointed official, officer, board member, employee, volunteer, or agent thereof shall be responsible for any claims, damage or liabilities occurring by reason of the willful misconduct of the other party, their officers, board members, employees, volunteers or agents or for any breach of contract claims regarding this Agreement.
- B. Both Parties agree to maintain insurance coverage in the minimum amounts necessary under the Oregon Tort Claims Act to cover public body liabilities and to name each other as an additional insured.

12. Termination. Except as otherwise provided herein, this Agreement may be terminated by either Party by giving twelve (12) months prior, written notice to the other Party. DISTRICT may terminate this Agreement with 60 days' written notice for EFD's failure to pay compensation as provided herein. In the event of such termination, DISTRICT shall provide EFD a reasonable opportunity to remedy the non-payment. This agreement may also be terminated upon mutual written agreement of both Parties.

13. Master Agreement. This agreement shall serve as the "Master Agreement" for fire and emergency medical services. Upon signing, the parties agree that this Agreement shall supersede all other Agreements between the parties.

14. Discrimination. The parties agree not to discriminate on the basis of race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, or source of income in the performance of this Agreement.

15. Waiver of Breach. A waiver of any breach of any provision of this Agreement by either party shall not operate as a waiver of any subsequent breach of the same or any other provision of this Agreement.

16. Applicable Laws. At all times during the term of this Agreement, The DISTRICT and EFD shall comply with all applicable laws, ordinances, rules, and regulations of the United States of America, the State of Oregon, including all agencies and subdivisions thereof.

17. General Provisions. Unless otherwise specifically prescribed in this Agreement, the following provisions shall govern its interpretation and construction:

- A. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number.
- B. Time is of the essence of this Agreement.
- C. Unless otherwise specified in this agreement, any action authorized or required to be taken by the DISTRICT shall be taken by its governing body or Fire Chief.
- D. Every duty and every act to be performed by either party imposes an obligation of good faith on the party to perform such.
- E. Any provision or condition of this Agreement may be waived at any time, in writing, by the party entitled to the benefit of such provision or condition. Waiver of any breach of any provision will not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

18. Dispute Resolution. The parties desire, if possible, to resolve disputes, controversies, and claims ("Disputes") arising out of this Agreement without litigation. To that end at the written request of a party, each party shall appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any Dispute arising under this Agreement. The parties intend that these negotiations be conducted by non-lawyer, business representatives. The discussions shall be left to the discretion of the representatives.

- A. If the negotiations do not resolve the Dispute within sixty (60) days of the initial written request, the Dispute shall be submitted to non-binding mediation with a mediator chosen by mutual agreement of the parties or, in the absence of such agreement, with a mediator appointed by the presiding judge of the Circuit Court for Clackamas County.
- B. Each party shall bear its own cost of these dispute resolution procedures. The parties shall equally share the fees of the mediation and the mediator.
- C. In the event the disputes or claims cannot be resolved under the above process, the dispute or claim shall be subject to binding arbitration. Arbitration shall be conducted pursuant to the rules of the Arbitration Service of Portland, and shall be conducted in Clackamas County, Oregon, unless otherwise agreed to by the parties.

19. Notice. All notices, reports, or demands required to be given in writing under this Agreement shall be deemed to be given when delivered personally to the person designated below, or his successor, or when five (5) days have elapsed after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid, or on the next addressed business day if sent by express mail or overnight air courier to the party to which the notice is being given:

To *[name of party]*: address]

Attention: _____

Facsimile No.: _____

With a copy to: *[name, address, and facsimile number of lawyer or other interested person]*

To *[name of party]*: address]

Attention: _____

Facsimile No.: _____

With a copy to: *[name, address, and facsimile number of lawyer or other interested person]*

20. Captions. The paragraph captions and headings in this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

21. Time Computation. Where the performance or doing of any act, duty, matter, payment, or thing is required hereunder and the period of time or duration for the

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performance is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on Saturday, Sunday, or a legal holiday, that day shall be omitted from the computation.

Clackamas Fire District #1
Fire Chief
11300 SE Fuller Road
Milwaukie, OR 97222

Estacada Rural Fire District #69
Interim Fire Chief
445 SE Currin St.
Estacada, OR 97023

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as dated below.

Clackamas Fire District #1

By: *[Signature]*

Title: *Fire Chief*

Date: *10-23-2019*

Estacada Rural Fire District #69

By: *[Signature]*

Title: *FIRE CHIEF*

Date: *10/20/19*

Service Level
Appendix A

Service Delivery

The DISTRICT has identified a response coverage plan in accordance with its Standards of Cover (SOC) document, CFAI Accreditation best practices and the Clackamas Ambulance Service Area (ASA) for EFD. Emergency response travel times to structure fires and emergency medical incidents are divided into three response categories – urban, suburban, and rural. Staffing will initially include the following and may be modified based on service level criteria changes:

Station 330 – 9 FTEs (3 personnel assigned per shift 24/7) / Support Volunteers
Station 333 – Volunteer Suppression Staffing as DISTRICT deems appropriate

The DISTRICT will provide 24/7 Chief Officer coverage to EFD for the command and control of emergencies and other assigned duties within EFD. This coverage will come from either the DISTRICTS north, south or east battalion chief.

The DISTRICT will increase operational staffing at Station 330 to 12 FTEs (4 personnel assigned per shift 24/7) July 1, 2021, if approved by the electors at the November, 2020 election

Administrative Support staffing

The DISTRICT will provide administrative support to EFD to accomplish the stated goals and objectives found within this contract. The DISTRICT will provide administrative support at Station 330 to help ensure a regular schedule for public access and to support EFD, DISTRICT and community needs.

Emergency Medical Services

The DISTRICT shall staff and equip each career response unit to an Advanced Life Support (ALS) paramedic level. Each volunteer suppression response unit will be staffed with a minimum Basic Life Support (BLS) EMT-Basic.

Inspections and Investigations

Fire and Life Safety Inspections and Fire Investigations will be established by the DISTRICT Fire Marshal. Frequency of inspections will include all target hazards at least once per year. Those include nursing homes, hospitals, schools and industrial facilities that utilize hazardous materials or conduct hazardous operations. Inspections in general business occupancies such as office complexes and retail outlets will be inspected as

determined by the DISTRICT inspection priority rating system. Inspection personnel will provide specialized services such as fire cause determination and, specialized occupancy inspections. Fire Investigators are on-call 24/7 as resources are available.

Specialized Rescue

Along with the other services as outlined the HazMat, Water Rescue, and Technical Rescue services will be continued with a regional approach, in cooperation with local, regional, state, and federal agencies.

Community Liaison/Community Involvement

The DISTRICT shall provide a public information officer (PIO) on-call 24/7, as resources are available. Community involvement will include participation and involvement in key organizations as defined by EFD and the DISTRICT.

Emergency Management

The DISTRICT shall provide emergency management services to EFD to include annual drills, training, operational plan updates, support of Community Emergency Response Teams (CERT), and other preparedness activities as determined by the DISTRICT.