

## MODEL

### MUTUAL AID AGREEMENT FOR ACCIDENTS INVOLVING HAZARDOUS MATERIALS AND RADIOACTIVE MATERIALS

#### ARTICLE I. PURPOSE AND SCOPE

The Agreement is between the State of \_\_\_\_\_ and the State of \_\_\_\_\_.

The Agreement pertains to emergency response activities involving accidents arising out of the transportation, storage, and use of hazardous materials and radioactive materials; excluding however, emergencies and accidents involving nuclear reactors.

The purposes of the Agreement are to:

1. Protect the health and safety of people and protect the environment.
2. Coordinate emergency plans and response, including:
  - (a) Sharing of Information essential to emergency response.
  - (b) Sharing of emergency response personnel and equipment.
  - (c) A way to allocate costs and clarify liability when one signatory state requests or renders help to the other.

Attachments to this Agreement specify information necessary and useful to its use in an emergency. Information on each of the attachments may be changed without review and approval of the entire agreement. Attachments will be reviewed and updated annually on the date of the signing of this agreement and as necessary.

#### ARTICLE II. STATE RESPONSIBILITIES

The States of \_\_\_\_\_ and \_\_\_\_\_ shall strive to maintain emergency response plans, including radiological and hazardous material response plans, procedures, personnel and equipment they deem adequate to meet the demand within their borders.

## **Governor's Designee**

Each Governor may delegate to one or more subordinates any or all of the governor's authority to request and respond pursuant to this Agreement. The governor's designee shall be an employee of the lead agency responsible for coordinating response to an emergency. Each governor may delegate to one or more state agencies any or all of the governor's authority to respond pursuant to this Agreement. The governors' designees are listed as Attachment A to this agreement. Governors' designees are not limited to the individuals listed in Attachment A: a governor may appoint another designee to carry out the provisions of this agreement. For the purposes of this agreement, hereafter the term "governor" also refers to the Governor's designee.

## **Request for Aid**

A request for aid shall be from a governor of one state to the governor of the other state. A request for aid shall specify the equipment, personnel and other resources needed; the request shall be consistent with the format in Attachment B to this Agreement, if practicable.

Attachment C to this agreement includes an inventory of the equipment and personnel resources available from each state for both hazardous material and radiological incidents:

## **Rendering Aid**

Upon receiving a request for aid, a state shall render all possible aid which can be made available without jeopardizing the protection of its people. A state providing aid shall determine the equipment, personnel and other resources that can respond. A state providing aid shall respond promptly.

## **Command and Control**

Emergency command and control shall rest with the authorities of the state or locality in which the emergency occurs. An incident commander will be identified for each emergency. Personnel rendering aid outside their state shall:

- (a) Work under the direction of the incident commander and the command structure of the state in which the emergency occurs. Employees of a state rendering aid will work under the direct supervision of their team leader who shall be under the command and control of the incident commander and the command structure of the state in which the emergency occurs.

## **Emergency Mutual Aid Agreement**

- (b) Notify the incident commander of any unsafe practices that threaten health and safety of responders.
- (c) Notify the incident commander of intent to leave the scene of emergency operations because of unresolved health and safety concerns.

#### **End of the Emergency**

The governor and the incident commander of the requesting state shall determine when the emergency has ended. This shall be determined expeditiously to allow personnel and equipment to return to their home state. The requesting state shall immediately inform the governor and response team of the state providing aid of the end of the emergency.

#### **Emergency Preparedness Joint Training Exercises**

The States of \_\_\_\_\_ and \_\_\_\_\_ agree to hold one emergency training exercise at least once every two years. Exercises may be table top or field exercises. Exercises may involve neighboring states.

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### **ARTICLE III. REIMBURSEMENT**

A requesting state shall reimburse a state rendering aid for all reasonable costs incurred, to the extent allowable by law. Reimbursement shall include costs for:

- (a) A prorated share of the salary and/or other compensation of personnel.
- (b) Transport of personnel and equipment.
- (c) Lodging and meals for personnel.
- (d) Replacing and/or repair of equipment.
- (e) Materials.
- (d) Other reasonable costs.

To the extent authorized by its constitution, law and/or regulations, a state rendering aid may waive reimbursement as a donation and/or in favor of a credit for future reciprocal action under this agreement.

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A state rendering aid shall submit a written request for reimbursement to the governor of the requesting state. A waiver of reimbursement shall be in writing, signed by the governor, and submitted following passage of the emergency.

To the extent authorized by law or regulation, the States of \_\_\_\_\_ and \_\_\_\_\_ agree to:

- (a) Cooperate fully with each other in the development, presentation, litigation, or settlement of claims against third parties for damages or other demands for money arising out of incidents for which assistance was provided under this agreement.
- (b) Provide cost information or data and assist in preparing claims, to the extent necessary to enable the claimant (either state) to adequately press or litigate the claims.
- (c) Share equitably in any recovery or settlement, based on costs to each other.

#### ARTICLE IV. ADMINISTRATION OF THIS AGREEMENT

The States of \_\_\_\_\_ and \_\_\_\_\_ shall designate a lead agency responsible for administration, maintenance, and update of this agreement. The lead agency shall:

- (a) Coordinate the activities pursuant to this agreement of other state agencies.
- (b) Assure development and update of state response plans and procedures compatible with this agreement.
- (c) Consult with potentially affected Indian tribes regarding the provisions of this agreement.

Attachment D to this Agreement lists the lead agencies and describes the procedure for maintenance and update of this agreement.

#### ARTICLE V. LIABILITY

To the full extent authorized by its constitution and laws, the state in which the emergency occurs (the "requester state") shall indemnify and defend, subject to the requester state's Tort claims or Governmental Claims act, the state rendering aid (the "responding state"), its agencies; officers, employees and servants, from and against any third party claim demand, action or proceeding that arises out of conduct or activity occurring within

## **Alternative #2. Reimbursement**

A state rendering aid pursuant to this agreement must be reimbursed by the state receiving such aid for the cost of compensation and death benefits to injured officers, agents, or employees and their dependents or representatives if such officers, agents or employees sustain injuries or are killed while rendering aid pursuant to this agreement and such payments are made in the same manner and on the same terms as if the injury or death were sustained within the aiding state.

## **Alternative #3. Incorporation by reference-reciprocal agreement**

The States of \_\_\_\_\_ and \_\_\_\_\_ hereby adopt and incorporate by reference that certain reciprocal agreement addressing workmens compensation matters entitled " \_\_\_\_\_ " and dated \_\_\_\_\_.

### **ARTICLE VII. WITHDRAWAL**

Either state may withdraw from this agreement by providing ninety day written notice to the other state.

It is provided, however, that this requirement for ninety days' written notice shall be waived in the event a state's legislative body fails to provide or terminates funding necessary to that state's participation, and the failure or termination takes effect in fewer than ninety days from the effective date of such termination of funds. In this event, the state shall provide written notice to the other state as soon as possible, and the withdrawal shall be effective immediately, but shall not affect obligations of the withdrawing state that have accrued prior to the date of notice and for which funding lawfully is available.

### **ARTICLE VIII. OTHER RESPONSIBILITIES AND ACTIVITIES**

Nothing in this agreement shall be construed to:

- (a) Authorize or permit either state to curtail or diminish its hazardous material or radiological disaster protection programs, equipment, services or facilities.
- (b) Limit or restrict the powers of either state to protect the public from hazardous materials or radiological emergencies, or enact or enforce laws, rules or regulations for such protection.

the requestor state and within the scope of responding to a request for aid including but not limited to, conduct or activities occurring after arrival at the emergency and until direct participation in the emergency response is concluded. Each state, its agencies, officers, employees and servants will cooperate reasonably and in good faith in the investigation and defense of any such claim. Nothing in this agreements shall be construed as a waiver or relinquishment by any party of any defense, immunity or privilege that otherwise may be available under the laws of the requester or responding state, including, but not limited to, any immunities or protections provided by laws applicable to responses to hazardous or radioactive material incidents. Each state reserves the right to participate, at its election and in a cooperative manner, in the defense of any claim involving defense and indemnification by the requestor state.

It is agreed that the term "any third party claim" does not include workers' compensation and other employment related claims as provided for in Article VI of this agreement. It is further agreed that "any third party claim" includes claims made against a responding state by another state not a party to this agreement but which was also responding to the emergency pursuant to a separate agreement with the requesting state.

For the purposes of this Article, response team members shall be considered an officer, employee or servant of the requesting state, acting temporarily on behalf of, and in the service of, the requesting state for limited purposes of emergency response.

#### ARTICLE VI. WORKERS' COMPENSATION AND OTHER BENEFITS

##### Alternative #1. No Reimbursement

A response team member shall be considered an officer, employee or servant of a state other than the state by which the member is regularly employed only for purposes of the defense and indemnification provided by Article V. Nothing in this Agreement shall be construed as requiring any requesting state, its agencies, officers, employees or servants to provide, to or for the benefit of the regular officers, employees or servants of a responding state, any benefits in the nature of workers' compensation, retirement, health, medical or other employment-related benefits, withholdings or tax payments. The payment by a requesting state of the reimbursement set forth in Article III shall be deemed full satisfaction and payment for the services rendered by a responding state, its officers, employees and servants.

- (c) Affect any existing or future cooperative relationship or arrangement between federal, state or local governments of either state.

**ARTICLE IX. SEVERABILITY**

It is the intent that the provisions of this agreement be reasonably and liberally construed. The provisions of this agreement shall be severable. If any part of this agreement is found to be unconstitutional to any state, agency, person, or circumstance, the constitutionality of the remainder of this agreement shall not be affected.

**APPROVAL:**

This agreement shall begin upon signature of all required parties.

STATE OF \_\_\_\_\_

by \_\_\_\_\_  
GOVERNOR

\_\_\_\_\_  
DATE

STATE OF \_\_\_\_\_

by \_\_\_\_\_  
GOVERNOR

\_\_\_\_\_  
DATE

**Emergency Mutual Aid Agreement**