



128 S Main St.  
PO Box 445  
Condon, OR 97823  
P: 541-384-2711  
F: 541-384-2700

**AGENDA  
CITY OF CONDON  
REGULAR MEETING  
128 SOUTH MAIN STREET, CITY HALL, CONDON, OREGON  
Monday, March 23, 2020, 6:00 PM**

- 1. CALL SPECIAL MEETING TO ORDER**
- 2. ROLL CALL**
- 3. DISCUSS COVID-19 ISSUES AND CITY PLANNING**
  - 3.1. Discuss Declaring a State of Emergency**
  - 3.2. Discuss and Review Utility Issues - Online Payments, Disconnect & Late Fees**
  - 3.3. Contributions to Other Community Programs - Food Pantry, Utility Assistance, Other Social Services**
- 4. DISCUSS CITY STAFFING - PUBLIC WORKS, PARK, GOLF, POOL, ADMINISTRATION**
- 5. DISCUSS MUTUAL AID FOR WATER & WASTEWATER SERVICES/CERTIFICATION**
  - 5.1. Review & Approve Public Works Mutual Aid Agreement**
- 6. ADJOURN SPECIAL MEETING**

If necessary, Executive Session may be held in accordance with ORS 192.660(2)(c). As this is a regular meeting of the Condon City Council, other matters may be addressed as deemed appropriate by the Council. Assisted listening device is available for persons with impaired hearing and should be scheduled for council meetings three working days prior to the Council meeting. The City of Condon is an Equal Opportunity Provider and Employer. Complaints of discrimination should be sent to City of Condon Administrator, PO Box 445, Condon, OR 97823.

***Agenda prepared and distributed March 20, 2020***



(<https://www.orcities.org/>)

Follow us:  (<https://twitter.com/@OregonCities>)  (<https://www.facebook.com/LeagueOfOregonCities>)

 enter search text

ABOUT

RESOURCES

EDUCATION

ADVOCACY

## COVID-19 (Coronavirus) Updates:

Get resources for cities formulating their response to COVID-19 (Coronavirus) >

(<https://www.orcities.org/resources/reference/coronavirus-resources>)

LOC Home (<https://www.orcities.org/>) > Resources: Reference (<https://www.orcities.org/resources/reference>)

> Coronavirus Resources (<https://www.orcities.org/resources/reference/coronavirus-resources>) > **COVID-19 Guidance from BEH**

Share:   

### Legal Guidance for Cities on COVID-19

Written by  (<http://behllp.com/>)

The LOC thanks Beery, Elsner & Hammond, a longtime LOC Business Partner, for making this guidance available to our member cities.

March 13, 2020

There are a multitude of issues arising out of the efforts being taken to contain and prevent the further spread of the novel coronavirus causing the disease known as COVID-19. We here at BEH want to share some information, which we thought might be helpful to you and your jurisdictions in addressing some of these issues.

Be safe, stay well, and keep washing those hands!

All the very best,  
Your friends and colleagues at BEH

### Public Meetings During Times of Emergency

A major concern for many clients is whether and how to conduct public meetings during a state of emergency. Below are summaries of advice regarding some of the most common issues that arise when trying to conduct public meetings during times of emergency.

**Cancellation/Postponement.** Consider cancelling and/or postponing regularly scheduled City Council, committee, task force, and other public meetings. Does the governing body really need to meet at this time or are there matters that can

wait for action at a future regularly scheduled, or special meeting? If a meeting is absolutely necessary, try to limit the agenda items to only those that must be addressed immediately to limit the length of time of the meeting as well as the number of individuals who may be interested in the topics being discussed.

**Notice of Cancellations.** The Oregon Public Meetings Law (ORS 192.630-192.695) does not require notice to the public of cancellations, but it is certainly appropriate to provide notice so as not to inconvenience the public. The best methods to provide such notice include press releases, posting on the City's web site, Facebook page and on other social media. Posting notices outside of the meeting room is also appropriate.

**Consider Holding Required Meetings Electronically.** If you must hold a meeting, it might not be possible (or advised) to have a quorum of a governing body attend in-person. As a result it may be necessary to set up a telephonic (or other electronic) meeting where all members of the governing body call in for a meeting. Please check your code/rules to ensure that they allow for this. If not, the governing body can usually vote at the outset for a suspension of those local rules in order to hold an electronic meeting.

**Telephonic/Electronic Meetings Must be Open to the Public.** If a governing body must hold a meeting, ORS 192.630(1)-(2) requires that the meeting be open to the public, and that all persons are permitted to attend. In other words, the meeting cannot be held in private. As a result, if a governing body decides to hold a telephonic/electronic meeting, it also needs to provide a mechanism by which members of the public can call in to "attend" the meeting. Merely setting up a call in number to listen or a live-stream to watch/listen remotely is not enough.

The governing body must also provide a place where individuals who do not have access to a phone/computer can call-in/livestream the meeting as well. The governing body should provide notice of how the public can attend remotely. It can strongly encourage the public to attend remotely, particularly given the circumstances, but a governing body cannot prohibit a member of the public from attending in person at the location where a phone/live-streaming station is set up, even if the members of the governing body are participating remotely.

Other social distancing tools, such as requiring all of those who attend in person to remain three feet from each other, may be implemented, provided that such tools do not unduly interfere with an individual's ability to observe/listen to the meeting.

**Public Comment.** The Oregon Public Meeting Laws do not require allowing the public to comment or otherwise participate in a public meeting (beyond attendance as discussed above). However, many localities might have their own local rule/ordinances that allow for public participation, or the right of the public to comment might be required by statute (i.e. budget hearings; most land use matters) or charter requirements.

Generally speaking, a governing body can suspend their local rules during a time of emergency and not permit public participation. In addition, if public participation is only required due to a governing body's rule, the governing body may alter how and when public comment is taken. For example, the governing body may decide to take public comment on all matters at the very beginning of the meeting rather than waiting for each individual agenda item or to the end of a meeting for matters not on the agenda. This type of action would permit individuals to provide comment and leave if desired.

Conversely, when public participation is required by law, most likely by a state statute, the governing body will need to determine how it can best provide flexibility to address the concerns of COVID-19. For example, a governing body may permit and encourage written comments to be submitted in advance, or provide a means for individuals to call in to participate in the meeting. As with attending the meeting, the governing body should provide a way for the individual to participate (i.e making a telephone available, etc).

A governing body needs to remain mindful, however, that it likely may not limit participation to just written comments. For example, the state's land use laws require public hearings where individuals may submit evidence, arguments, or testimony. Arguably, this requires the acceptance of both written and oral testimony. In addition, federal laws, such as the Americans with Disabilities Act (ADA), will likely require a governing body to accept oral testimony from those individuals who are not capable of providing written testimony.

If possible, the governing body should provide advance notice of the procedures it will use to accept public testimony on its meeting notices and also on its website. These notices can strongly encourage the public to use these alternative means

rather than attending in person.

**Special Meetings.** Generally a governing body must provide at least 24 hours' notice of any public meeting under ORS 192.640(3), however, the statute allows less than 24 hours' notice in the case of an actual emergency, but such meetings must be held only "as is appropriate to the circumstances" and the minutes for such a meeting must describe the emergency justifying less than 24 hours' notice. Whether an actual emergency exists depends on the facts and circumstances of each situation. In the event the meeting is held with less than 24 hours' notice the governing body must attempt to reach interested persons and the news media (phone call or email) to notify them of the emergency meeting.

The Oregon Court of Appeals has indicated that it will scrutinize closely any claim of an actual emergency. Any claimed actual emergency must relate directly to the matter to be discussed at the emergency meeting. An actual emergency on one matter does not "justify a public body's emergency treatment of all business coming before it at approximately the same time." *Or. Ass'n of Classified Employees v. Salem-Keizer Sch. Dist.* 24J, 95 Or App 28, 32 (1989) (actual emergency concerning budget and levy problems did not "convert the contract approval deliberations into an emergency"). Nor do the work schedules of governing body members provide justification for an emergency meeting.

**Large Meetings.** While not many of our clients typically have more than 250 people present at a public meeting, please note that pursuant to the Governor's executive order, such meetings would be prohibited. If you run into such a situation, you will need to limit the number of individuals gathered at the meeting by taking actions such as setting up an overflow room for individuals to observe the meeting and requiring movement of individuals in and out of the meeting room as necessary to permit all who want to provide public comment an opportunity to do so (if public comment is permitted or required).

## Emergency Declarations by Cities

Several cities have or are considering issuing an emergency declaration related to COVID-19. As you likely know, the Governor has already issued a statewide declaration of emergency, and a few counties, including Washington and Clackamas counties, have as well. So should a city also issue an emergency declaration?

The answer to this question depends on why a city desires to do so, as well as what powers or authority may come from such a declaration for a city.

As an initial matter, it is important to note that most actions related to curbing the spread of disease are under the control of county public health authorities. Under state law (ORS 431.003), counties generally act as the public health authority. In addition, state law (ORS Chapter 433) addresses "Disease and Condition Control; Mass Gatherings; Indoor Air" and grants certain powers to the local public health authority in carrying out the provisions of the statute. Given these state laws, typically counties will be the first line of defense on these issues, and their actions will supersede those of a city.

In addition, as mentioned above, the Governor has also signed an **Emergency Declaration** (<https://behllp.us17.list-manage.com/track/click?u=7acf620efb40ca986e0da4646&id=33df59752e&e=7f526fea83>) authorizing the State and relevant state agencies to act under the Declaration. She has also signed an **Executive Order** (<https://behllp.us17.list-manage.com/track/click?u=7acf620efb40ca986e0da4646&id=dbf7b11fef&e=7f526fea83>) banning gatherings of more than 250 people when attendees cannot maintain a three foot distance from each other. Under state law (ORS 401.309), the Governor's orders related to the declared state of emergency also supersede any actions taken by a city.

So what role does a city play as it relates to a declaration of emergency? First of all, under state law, cities are responsible for emergency services in their jurisdictions. Specifically, under ORS 401.035 "the emergency services system is composed of all agencies and organizations involved in the coordinated delivery of emergency services. The Governor is responsible for the emergency services system within the State of Oregon. The executive officer or governing body of each county or city of this state is responsible for the emergency services system within that jurisdiction."

Thus, even if a city does not declare its own state of emergency, it likely has obligations to assist the state and/or county with implementing measures that they have imposed to address COVID-19. For example, if a city becomes aware of any gathering that would violate the Governor's executive order cancelling all gatherings greater than 250, then the City would have a duty to give those gathered an order to disperse. If the individuals refuse to disperse, then they have violated a

lawful order and can be cited accordingly.

In addition, under state law, a city governing body may declare its own state of emergency (ORS 401.309). Should a city declare its own state of emergency, it may impose additional restrictions or take other actions needed to address the emergency, as long as they do not conflict with the Governor's orders or those issued by the public health authority and are authorized by law.

Generally speaking, actions taken by a city under an emergency declaration are authorized through a city ordinance or state law. For example, many cities have emergency management ordinances, which provide a procedure for declaring an emergency and granting powers to a city manager, an elected official or the council as a body once the emergency is declared. Most such ordinances typically permit actions such as imposing curfews; closing streets or other public places; prohibiting the sale of certain items; as well as taking any other actions that are imminently necessary under the circumstances for the protection of life or property or to prevent or minimize danger to lives or property.

Equally important, once a declaration of emergency is declared, a city is generally exempted from public contracting requirements and may directly award contracts as needed to address the emergency. (See, generally, OAR 137-049-0150.)

If your city does not have such an ordinance in place, it may certainly enact one on an emergency basis or merely rely on the authority and powers granted by ORS 401.309 to declare an emergency.

A declaration of emergency may also provide a mechanism for a city to receive county, state or federal funding to assist with an emergency. Typically, federal funding is not available unless the state declares an emergency, and state funding is not available unless a county declares an emergency. To that end, in most emergency situations, such as a natural disaster, a city would submit its declaration of emergency to the county, which would then submit a declaration to the state, which would then submit a declaration to the federal government. With COVID-19, the state has already declared an emergency as have a few counties. To that end, it is not clear that a city will need to declare its own emergency in order to receive any funding that may become available. Cities that are in need of funding assistance to deal with COVID-19 issues should contact their county offices of emergency management or the Oregon Office of Emergency Management (OEM) for assistance. OEM has also published **guidelines (<https://behllp.us17.list-manage.com/track/click?u=7acf620efb40ca986e0da4646&id=1ebef49eda&e=7f526fea83>)** for local emergency declarations, which may provide additional assistance to cities.

As a final note, in considering what additional actions a city may desire to take under an emergency declaration, jurisdictions should remain mindful that constitutional limitations may still apply to such actions. For example, a city may desire to implement restrictions on gatherings smaller than the state limit of 250 persons. In such situations, cities need to keep in mind the constitutional right under the First Amendment of "freedom of assembly" and how such a limitation would implicate that right. Generally, to be valid, the city's regulatory action would need to be "narrowly tailored" to address a "compelling government interest." Depending upon the facts of a specific situation, that test may be hard to satisfy where the Governor has already set a threshold of 250 persons. Nonetheless, in the event that a circumstance arises where neither the state nor the county act (or determine that they do not have the authority to act), the city could step in under its emergency authority to fill the void.

## What About Employment Concerns?

Many jurisdictions are considering how to accommodate employees either needing to or choosing to quarantine during this health crisis. Many unions, most notably AFSCME, have sent around a sample "letter of agreement" (LOA) between employers and unions. Some of these LOAs allow employees who cannot work from home to use paid administrative leave (and not their accrued leaves) for symptoms that could be related to COVID-19 without requiring medical verification. Local governments may choose this option, but it is not the only choice.

Local governments have a variety of choices.

- First, local governments may take no proactive steps and simply allow employees to use sick leave and telework policies as usual.
- Second, local governments may choose to expand, amend, or enact telework policies.

- Third, local governments may choose to allow some employees to use paid administrative leave rather than accrued leaves.
- Fourth, local governments may amend sick leave policies, for example, to not require medical verification.
- Finally, local governments may take a combination of the actions listed above, or agree to a union's proposed LOA.

Some local jurisdictions (Washington County and **McMinnville** (<https://behllp.us17.list-manage.com/track/click?u=7acf620efb40ca986e0da4646&id=4fc2298f4d&e=7f526fea83>) for example) have adopted a temporary policy in response to COVID-19 that provides paid administrative leave to certain categories of employees and ask that employees certify they belong in one of the categories. This is a prudent intermediary option.

A few things to keep in mind ....

- Make sure to note that any changes in policy are temporary and will sunset at a date certain or when the crisis subsides.
- Keep your union in the loop. In emergency situations, employers are allowed to make unilateral changes to mandatory subjects of bargaining (such as leaves) without *finishing* bargaining first. But when making changes to policies such as use of sick leave, make sure your union is notified of your changes and given the opportunity to request to bargain. If necessary, bargaining can commence while your policy is already in place.
- Check your collective bargaining agreements. Many CBAs include sick leave articles. If your jurisdiction is planning on not adhering to the terms of the agreement (for instance not requiring medical verification for use of sick leave), it is best to alert the union and get their agreement first. Unions likely will not push back on employers making a policy more employee-friendly, but better safe than sorry. Again, be sure to communicate that the policy is temporary and is not intended to impact the employer's ability to enforce the provision in the future.

Finally, as a reminder, under Oregon's Sick Time law, employers must allow employees to use sick time in public health emergencies for the following reasons:

- Closure of the employee's place of business, or the school or place of care of the employee's child, by order of a public official due to a public health emergency;
- A determination by a lawful public health authority or a health care provider that the presence of the employee or the family member of the employee in the community would jeopardize the health of others; or
- The exclusion of the employee from workplace under any law or rule that requires the employer to exclude the employee from the workplace for health reasons.

## Additional Resources

CDC: <https://www.cdc.gov/coronavirus/2019-ncov/index.html> (<https://behllp.us17.list-manage.com/track/click?u=7acf620efb40ca986e0da4646&id=d7c3cb70bc&e=7f526fea83>)

OHA: <https://www.oregon.gov/oha/pages/index.aspx> (<https://behllp.us17.list-manage.com/track/click?u=7acf620efb40ca986e0da4646&id=643fdf9712&e=7f526fea83>)

OEM: <https://www.oregon.gov/OEM/Pages/default.aspx> (<https://behllp.us17.list-manage.com/track/click?u=7acf620efb40ca986e0da4646&id=46e3fcb69e&e=7f526fea83>)

## Find It Fast

---

Use these convenient quick links:

- **Contact Us** (<https://www.orcities.org/contact>)
- **Staff Directory** (<https://www.orcities.org/about/who-we-are/staff-directory>)
- **Topics A-Z** (<https://www.orcities.org/resources/reference/topics-z>)
- **City Directory** (<https://www.orcities.org/resources/reference/city-directory>)
- **Jobs Board** (<https://www.orcities.org/resources/programs-and-services/government-jobs>)

- **Cities in the News** (<https://www.orcities.org/about/news>)
- **Training and Workshops** (<https://www.orcities.org/education/training>)

## Stay Informed

---

### Get the LOC Bulletin

Our weekly e-newsletter provides relevant and timely information for city officials. Sign up to receive future issues in your email inbox.

**see current and past issues** >

### Read the Local Focus Magazine

Local Focus covers current city issues and trends and is distributed to 3,500 city officials every quarter.

**see current and past issues** >

## Keep In Touch

---

The League of Oregon Cities is the go-to place for and about cities. Connect with us to see what we can do for you.

 **503-588-6550** (tel:5035886550)

 **loc@orcities.org** (mailto:loc@orcities.org)

 **League of Oregon Cities**

**1201 Court St. NE**

**Suite 200**

**Salem, OR 97301-4194** (<https://goo.gl/maps/hACicPzLMABV9zpx5>)

**Contact** (<https://www.orcities.org/contact>)

**City Directory** (<https://www.orcities.org/resources/reference/city-directory>)

**Privacy Policy** (<https://www.orcities.org/privacy-policy>)

Copyright 2020 League of Oregon Cities

## RESOLUTION NO. 2020-05

### **A RESOLUTION OF CITY OF CONDON DECLARING A STATE OF EMERGENCY IN RESPONSE TO THE COVID-19 PANDEMIC; AND AUTHORIZING THE CITY MANAGER TO TAKE ACTIONS NECESSARY AND APPROPRIATE TO PROTECT THE HEALTH, SAFETY, AND WELFARE OF THE CITY AND CITY'S CITIZENS.**

WHEREAS, City of Condon ("City"), an Oregon municipal corporation, has all powers that the constitutions, statutes, and common law of the United States and Oregon expressly or impliedly grant or allow City; and

WHEREAS, the coronavirus (COVID-19) is a virus that can cause respiratory disease with the potential to cause serious illness and/or loss of life for individuals, especially individuals with underlying health conditions; and

WHEREAS, on March 8, 2020, Governor Kate Brown declared a state of emergency due to the COVID-19 outbreak in Oregon (Executive Order No. 20-03), finding that COVID-19 has created a threat to public health and safety, and constitutes a statewide emergency under ORS 401.025(1); and

WHEREAS, ON March on March 18, 202, Judge Elizabeth Farrar declared a state of emergency due to the COVID-19 outbreak in Oregon (Resolution No. R2020-08) under ORS 401.305 provides for Gilliam County to act as an emergency management agency, including authority to establish policies and protocols for defining and directing responsibilities during time of emergencies; and

WHEREAS, on March 11, 2020, COVID-19 was declared a pandemic by the World Health Organization; and

WHEREAS, Section 2.90.030(1) provides that the city manager may declare a state of emergency after reasonable efforts to confer with the mayor; and

WHEREAS, the Council finds that COVID-19 is a public health crisis that threatens the health, safety, and welfare of City and City's citizens and constitutes an imminent threat of severe damage, injury, illness, human suffering, financial loss, and/or loss of life; and

WHEREAS, the Council finds that COVID-19 necessitates the need for a state of emergency based on the following conditions:

- Oregon announced its first presumptive case of Coronavirus (COVID-19) on February 28, 2020.
- The Governor of the State of Oregon declared a statewide emergency on March 8, 2020.

WHEREAS, the City is in a state of emergency.

WHEREAS, this declaration is in support of the COVID-19 public health response, the residents of the City are encouraged to follow standard hygiene protocols, implement social distancing measure and stay at home when ill or as directed by State of Oregon order; and

NOW THEREFORE BE IT RESOLVED

NOW, THEREFORE, BE IT RESOLVED that City of Sisters resolves as follows:

1. Findings. The above-stated findings contained in this Resolution No. 2020-05 (this "Resolution") are hereby adopted. Without otherwise limiting the generality of the immediately preceding sentence, the Council finds that COVID-19 threatens the health, safety, and/or welfare of City and its citizens and/or causes or may cause damage, injury, and/or death to persons and/or property in City.

2. Emergency Declaration; Notice. The Council hereby approves, ratifies, and confirms the emergency declaration, including all actions described therein and all actions taken in furtherance thereof, and further declares a state of emergency commencing March 23, 2020 and ending April 28, 2020; however, if the city administrator determines that emergency conditions exist as of April 28, 2020, the city administrator may, without prior Council authorization, extend the emergency declaration by administrative order. The emergency declared in this Resolution applies to all areas within City's incorporated limits. City will give notice of the emergency declaration through press releases, public media, and such other means the city manager deems reasonable under the circumstances.

3. Temporary Regulations. For purposes of preventing, preparing for, minimizing, responding to, and/or recovering from the emergency, City may, to the fullest extent permitted under applicable law, adopt such procedures, measures, and/or actions necessary for protection of the health, safety, and/or welfare of persons, property, infrastructure, and/or the environment. Without otherwise limiting the generality of the immediately preceding sentence, City is hereby authorized to take such actions necessary to prepare for, prevent, mitigate, and/or respond to the emergency, including, without limitation, the following: (a) transferring and/or redirecting any City funds necessary or appropriate for uses and/or purposes related to the emergency; (b) suspending City's public contracting and/or procurement rules, procedures, and/or requirements for any contract or purchase necessary and/or appropriate to respond to the emergency, including, without limitation, contracts for goods, services, and/or construction services; (c) cancelling non-essential City meetings and/or events, including, without limitation, committee, commission, task force, and other City meetings, and/or modifying the manner and/or method in which essential City meetings are held and conducted; (d) suspending code enforcement actions; (e) suspending utility shut-offs and/or utility service terminations; (f) limiting the congregation and/or gathering of individuals; (g) reducing and/or eliminating City business hours; (h) closing and/or limiting access to City property and City buildings, including City Hall; (i) adopting, modifying, and/or suspending City personnel policies, including, without limitation, adjusting work schedules, adopting remote work policies, and/or modifying leave policies; (j) any actions authorized under ORS chapter 401; and/or (k) adopting and implementing such actions, precautions, measures, and/or procedures recommended by federal, state, and/or local governments and/or agencies, including, without limitation, the Centers for Disease Control and Prevention, Oregon Health Authority, and/or Deschutes County Health Services.

4. Authorization. The Council authorizes, approves, and directs the city administrator, and his or her designee, acting individually and without further Council approval and/or authorization, to take all actions necessary or appropriate to prevent, prepare for, minimize, respond to, and/or recover from the emergency, including, without limitation, adopting, implementing, administering, and/or effectuating any policy, procedure, measure, and/or action described in Section 3 of this Resolution. The approval and authority provided under this Section 4 will remain in full force and effect until the earlier of (a) conclusion of the state of emergency declaration provided under Section 2 of this Resolution, or (b) revocation by Council resolution. The city administrator is further authorized to coordinate with other

federal, state, and/or local agencies concerning City's response to, and recovery from, the emergency, including, without limitation, requesting assistance and reimbursement from the State of Oregon and/or appropriate federal agencies.

5. Miscellaneous. All pronouns contained in this Resolution and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. The provisions of this Resolution are hereby declared severable. If any section, subsection, sentence, clause, and/or portion of this Resolution is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this Resolution. This Resolution may be corrected by order of the Council to cure editorial and/or clerical errors.

ADOPTED by the City Council of City of Condon and signed by the mayor this 23<sup>rd</sup> day of March, 2020.

---

Jim Hassing, Mayor

ATTEST:

---

Kathryn Greiner, City Administrator

## **MUTUAL AID AND ASSISTANCE AGREEMENT FOR THE PROVISION OF EMERGENCY SERVICES RELATED TO WATER AND WASTEWATER UTILITIES**

This Mutual Aid and Assistance Agreement ("Agreement") establishes a Mutual Aid Assistance Program among signatories to this Agreement, and contains procedures and standards for a water and wastewater utility Mutual Aid and Assistance Program.

### **AGREEMENT**

This Agreement is entered into by the Members that have, by executing this Agreement, manifested their intent to enter into a Mutual Aid and Assistance Program through the Oregon Water/Wastewater Agency Response Network (ORWARN). Associate Members may also become affiliated with ORWARN by executing this Agreement. A list of all Members and Associate members shall be maintained by the Governing board and is available upon request from a Governing Board.

### **ARTICLE I. PURPOSE**

Recognizing that emergencies may require assistance in the form of personnel, equipment, and supplies from outside the area of impact, the Members hereby establish a Mutual Aid and Assistance Program. Through the Mutual Aid and Assistance Program, Members may, in their discretion, coordinate response activities and share resources during emergencies. This Agreement sets forth the procedures and standards for the administration of the Mutual Aid and Assistance Program.

### **ARTICLE II. DEFINITIONS**

A. Associate Members Any public or private entity that desires to be affiliated with ORWARN may become an Associate Member. Associate Members may attend board meetings, attend general membership meetings, attend training exercises, receive general information regarding the organization and participate in other activities deemed appropriate by the Governing Board. Associate Members may not request assistance or respond to a request for assistance under the Agreement. Further, Associate Members may not vote and

are ineligible to serve on the Governing board.

B. Authorized Official Employees or officers of a Member that are authorized to: (1) request assistance; (2) offer assistance; (3) refuse to offer assistance or (4) withdraw assistance under this Agreement.

C. Confidential Information Any document shared with any signatory of this Agreement that is marked confidential, including but not limited to any map, report, notes, papers, opinion, or e-mail which relates to the system vulnerabilities of a Member.

D. Emergency Any human caused or natural event or circumstance causing, or imminently threatening to cause, loss of life, injury to person or property, human suffering or financial loss, and includes, but is not limited to, fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills or releases of oil or hazardous material as defined in ORS 466.605, contamination, utility or transportation emergencies, disease, blight, infestation, civil disturbance, riot, intentional acts, sabotage and war that is, or could reasonably be believed to be beyond the control of the services, personnel, equipment, and facilities of a Member.

E. Member Any municipal corporation, quasi-municipal corporation, department or agency of a municipal corporation, department or agency of a quasi-municipal corporation, service district, political subdivision or private utility company that participates in the Mutual Aid and Assistance Program by executing this Agreement. If any municipal corporation, quasi-municipal corporation, department or agency of a municipal corporation, department or agency of a quasi-municipal corporation, service district, political subdivision or private utility company has separate water and wastewater operations, each one, if contracting separately, shall be deemed to be a Member for purposes of this Agreement.

F. National Incident Management System (NIMS) A national, standardized approach to incident management and response that sets uniform processes and procedures for emergency response operations.

G. Non-Responding Member A Member that does not provide assistance during a Period of Assistance under the Mutual Aid and Assistance Program.

H. Period of Assistance A period of time during which a Responding Member assists a Requesting Member. The period commences when personnel, equipment, or supplies depart from a Responding Member's facility and ends when the Responding Member no longer supplies personnel, equipment, supplies or services to the Requesting Member.

I. Requesting Member A Member that requests assistance under the Mutual Aid and Assistance Program.

J. Responding Member A Member that responds to a request for assistance under the Mutual Aid and Assistance Program.

### **ARTICLE III. ADMINISTRATION**

A. A Governing Board shall be established to organize and maintain the Mutual Aid and Assistance Program. The Governing Board shall be elected by ballot by a majority vote of the Members of this Agreement. Each Member shall have one vote. Associate Members are ineligible to vote and may not serve on the Governing Board.

B. The Governing Board shall consist of 5 Members. The Governing Board will elect the following officers: a Chair; a Vice Chair; and a Secretary. The term of all board members shall be 2 years, except that in the first year the Agreement is in effect, the term of the Vice Chair and other board members shall be 1 year. A quorum shall be a majority of the Members of the Governing Board.

C. The Governing Board shall meet at least twice each year, at a meeting place designated by the Governing Board. The Governing Board may make, establish and alter rules and regulations for its procedure consistent with generally recognized principles of parliamentary procedure. The Governing Board shall have the power to carry out the purposes of this Agreement, including but not limited to the power to: adopt bylaws; develop specific procedures and protocol for requesting assistance; develop specific procedures and protocol for responding to a request for assistance; organize meetings; operate a website; disseminate information; create informational brochures; create subcommittees; maintain membership lists; maintain equipment and supply inventory lists; and deal with membership issues.

### **ARTICLE IV. REQUESTS FOR ASSISTANCE**

A. Member Responsibility: Members shall designate Authorized Official(s); provide contact information including emergency 24-hour contact information; and maintain resource information made available by the utility for mutual aid and assistance response. Such information shall be updated annually or when changes occur and provided to the Governing Board.

In the event of an Emergency, a Member's Authorized Official may request mutual aid and assistance from a participating Member. Requests for assistance can be made orally or in writing. When made orally, the request for

personnel, equipment, and supplies shall be provided in writing as soon as practicable. Requests for assistance shall be directed to the Authorized Official of the participating Member. The Governing Board shall develop specific protocols for requesting aid in bylaws, as amended from time to time.

B. Response to a Request for Assistance: After a Member receives a request for assistance, the Authorized Official evaluates whether resources are available to respond to the request for assistance. Following the evaluation, the Authorized Official shall inform, as soon as possible, the Requesting Member whether it has the resources to respond. If the Member is willing and able to provide assistance, in its sole discretion, the Member shall inform the Requesting Member about the type of available resources and the approximate arrival time of such assistance.

C. Discretion of Responding Member's Authorized Official: Execution of this Agreement does not create any duty to respond to a request for assistance. When a Member receives a request for assistance, the Authorized Official shall have sole and absolute discretion as to whether or not to respond to the request, and the availability of resources to be used in any such response. All Authorized Official's decisions on the availability of resources shall be final unless overridden by the Member's governing body.

## **ARTICLE V.**

### **RESPONDING MEMBER PERSONNEL**

A. National Incident Management System: When providing assistance under this Agreement, the Requesting Member and Responding Member will use the organizational principles set forth in the National Incident Management System.

B. Control: Responding Member personnel shall remain under the direction and control of the Responding Member. The Requesting Member's Authorized Official shall coordinate response activities with the designated supervisor(s) of the Responding Member(s). Whenever practical, Responding Member personnel must be self sufficient for up to 72 hours.

C. Food and Shelter: When possible, the Requesting Member shall supply reasonable food and shelter for Responding Member personnel. If the Requesting Member does not provide food and shelter for responding personnel, the Responding Member's designated supervisor is authorized to secure the resources reasonably necessary to meet the needs of its personnel. Except as provided for below, the cost for such resources must not exceed the State per diem rates for that area. To the extent Food and Shelter costs exceed the State per diem rates for the area, Responding Member must demonstrate that the additional costs were reasonable and necessary under the circumstances. Unless otherwise agreed to in writing, the Requesting Member remains

responsible for reimbursing the Responding Member for all reasonable and necessary costs associated with providing food and shelter, if such resources are not provided.

D. Communication: The Requesting Member shall provide Responding Member personnel with radio equipment as available, or radio frequency information to program existing radio equipment, in order to facilitate communications with local responders and utility personnel.

E. Licenses and Permits: To the extent permitted by law, Responding Member personnel who hold valid licenses, certificates, or permits evidencing professional, mechanical, or other skills shall be allowed to carry out activities and tasks relevant and related to their respective credentials during the specified Period of Assistance.

F. Right to Withdraw: The Responding Member's Authorized Official retains the right to withdraw some or all of its resources at any time for any reason in the Responding Member's sole and absolute discretion. Responding Member(s) shall have no liability from a decision to withdraw. Notice of intention to withdraw must be communicated to the Requesting Member's Authorized Official as soon as is practicable under the circumstances.

## **ARTICLE VI**

### **COST REIMBURSEMENT**

A. Cost Reimbursement: Unless otherwise mutually agreed by the Requesting Member and the Responding Member, the Requesting Member shall reimburse the Responding Member for each of the following categories of costs incurred while providing aid and assistance during the Period of Assistance.

B. Personnel Costs: Responding Member personnel costs shall be the amount to be paid for work performed by the Responding Member's personnel during a Period of Assistance under the terms and conditions of the Responding Member's individual employment contracts with such personnel. The Responding Member's designated supervisor(s) shall keep accurate records of work performed by personnel during the Period of Assistance. Requesting Member reimbursement to the Responding Member shall include all personnel costs incurred by the Responding Member, including, but not limited to, salaries or hourly wages, costs for fringe benefits, and indirect costs.

C. Costs of Equipment: The Requesting Member shall reimburse the Responding Member for the use of equipment during a Period of Assistance, including, but not limited to, reasonable rental rates, all fuel, lubrication, maintenance, transportation, and loading/unloading of loaned equipment. All

equipment shall be returned to the Responding Member as soon as is practicable and reasonable under the circumstances. Generally, rates for equipment use will be based on the Federal Emergency Management Agency's (FEMA) Schedule of Equipment Rates. If a Responding Member uses rates different from those in the FEMA Schedule of Equipment Rates, the Responding Member must provide such rates orally or in writing to the Requesting Member prior to supplying equipment. Mutual agreement on which rates are used must be reached in writing prior to dispatch of the equipment. Reimbursement for equipment not referenced on the FEMA Schedule of Equipment Rates must be developed based on actual recovery of costs. In the event loaned equipment is damaged while being dispatched to Requesting Member, or while used during a Period of Assistance, and such damage is not due to negligence or intentional acts of the Responding Member, Requesting Member shall reimburse Responding Member for the reasonable cost of repairing such damaged equipment. If the damaged equipment cannot be repaired, then Requesting Member shall reimburse Responding Member for the reasonable cost of replacing such damaged equipment with equipment that is of equivalent age, condition and of at least equal capability. If Responding Member must lease a piece of equipment while its equipment is being repaired, Requesting Member shall reimburse Responding Member for such rental costs.

D. Costs of Materials and Supplies: The Requesting Member must reimburse the Responding Member in kind or at actual replacement cost, plus handling charges, for Responding Member's use of expendable or non-returnable supplies during the Period of Assistance. The Responding Member must not charge direct fees or rental charges to the Requesting Member for supplies and reusable items that are returned to the Responding Member in a clean, damage-free condition. Reusable supplies that are returned to the Responding Member with damage shall be treated as expendable supplies or non-returnable for purposes of cost reimbursement.

E. Payment Period: The Responding Member must provide an itemized bill to the Requesting Member for all expenses incurred by the Responding Member in providing assistance under this Agreement, not later than ninety (90) days following the end of the Period of Assistance. The Responding Member may request additional periods of time within which to submit the itemized bill, and Requesting Member shall not unreasonably withhold consent to such request. The Requesting Member shall pay the bill in full on or before the forty-fifth (45th) day following the billing date. The Requesting Member may request additional periods of time within which to pay the itemized bill, and Responding Member shall not unreasonably withhold consent to such request, provided, however, that all payment shall occur not later than one-year after the date a final itemized bill is submitted to the Requesting Member.

F. Records: Each Responding Member and their duly authorized representatives shall have access to a Requesting Member's books, documents, notes, reports, papers and records which are directly pertinent to this Agreement for the purposes of reviewing the accuracy of a cost bill or making a financial, maintenance or regulatory audit. Each Requesting Member and their duly authorized representatives shall have access to a Responding Member's books, documents, notes, reports, papers and records which are directly pertinent to this Agreement for the purposes of reviewing the accuracy of a cost bill or making a financial, maintenance or regulatory audit. Such records shall be maintained for at least three (3) years or longer where required by law.

## **ARTICLE VII. DISPUTES**

If a dispute arises between Members under this Agreement, the disputing Members shall first attempt to resolve the dispute by negotiation, followed by mediation and finally by filing an action in a court of competent jurisdiction.

Step One: The disputing Members shall authorize a person ("Authorized Official") to negotiate on their behalf. If the dispute is resolved at this step, there shall be a written determination of such resolution, signed the disputing Members' Authorized Official and ratified by each governing body, if required. Step One will be completed when notice is delivered in writing to all disputing Members.

Step Two: If the dispute cannot be resolved within fifteen (15) business days at Step One, the disputing Members shall submit the matter to mediation. The disputing Members shall attempt to agree on a mediator. If they cannot agree, the disputing Members shall request a list of five (5) mediators from an entity or firm providing mediation services. The disputing Members will mutually agree on a mediator from the list provided. If the disputing Members cannot mutually agree upon a mediator, the disputing Members shall alternatively strike one name from the list until one mediator remains. The remaining mediator shall be the mediator for the dispute. Any common costs of mediation shall be borne equally by the disputing Members who shall each bear their own costs and fees. If the issue is resolved at this step, a written determination of such resolution shall be signed by each Authorized Official and ratified by their respective governing bodies, if necessary.

Step Three: If the disputing Members are unsuccessful at Steps One and Two, the dispute shall be resolved by a State of Oregon

court of competent jurisdiction. Venue shall be in the jurisdiction of the Responding Member, subject to statutory limitations.

**ARTICLE VIII.**  
**DUTY OF REQUESTING MEMBERS TO INDEMNIFY**

Subject to the Oregon Constitution, the limits imposed under the Oregon Tort Claims Act, and laws of the state of Oregon applicable to local governments, the Requesting Member shall assume the defense of, fully indemnify, save and hold harmless, all Members, and their board, directors, commissioners, officers, agents and employees, from all claims, suits, actions, loss, damage, injury, and liability of every kind, nature, and description, directly or indirectly arising from any Responding Member's act or omission during a specified Period of Assistance, except for claims arising out of the willful misconduct or gross negligence of a Responding Member, its board, directors, commissioners, officers, agents and employees.

**ARTICLE IX.**  
**SIGNATORY INDEMNIFICATION**

To the extent not addressed in Article VIII, and subject to the Oregon Constitution and limits imposed under the Oregon Tort Claims Act, a Requesting Member shall have a duty to defend, indemnify, save and hold harmless all Non-Responding Members and Associate Members, their officers, agents and employees from any liability, claim, demand, action, or proceeding of whatever kind or nature arising out of a Period of Assistance.

**ARTICLE X.**  
**WORKER'S COMPENSATION CLAIMS**

Each Responding Member shall provide worker's compensation benefits and administering worker's compensation for its own personnel.

**ARTICLE XI.**  
**NOTICE**

A Member or Associate Member that becomes aware of a claim or suit that in any way, directly or indirectly, contingently or otherwise, affects or might affect other Members or Associate Members of this Agreement shall provide prompt and timely notice to the Members or Associate Members that may be affected by the suit or claim. Each Member and Associate Member reserves the right to participate in the defense of such claims or suits as necessary to protect its own interests.

**ARTICLE XII.**  
**INSURANCE**

Members and Associate Members of this Agreement shall maintain an appropriate insurance policy or maintain a self-insurance program that covers activities that it may undertake by virtue of membership in the Mutual Aid and Assistance Program.

**ARTICLE XIII**  
**CONFIDENTIAL INFORMATION**

To the extent provided by law, Members and Associate Members shall maintain in the strictest confidence and shall take all reasonable steps necessary to prevent the disclosure of any Confidential Information disclosed under this Agreement. If any Member, Associate Member, third party or other entity requests or demands, by subpoena or otherwise, that a Member or Associate Member disclose any Confidential Information disclosed under this Agreement, the Member or Associate Member shall immediately notify the owner of the Confidential Information and shall take all reasonable steps necessary to prevent the disclosure of any Confidential Information by asserting all applicable rights and privileges with respect to such information and shall cooperate fully in any judicial or administrative proceeding relating thereto.

**ARTICLE XIV.**  
**EFFECTIVE DATE AND PROCESS TO ADD NEW MEMBERS**

This Agreement shall be effective after two (2) or more entities' authorized representatives execute the Agreement. Membership shall become effective upon executing this Agreement. A list of all Members and Associate Members shall be maintained by the Governing board and is available upon request from a Governing Board.

**ARTICLE XV.**  
**TERM**

Unless restricted by Oregon statutes, municipal Charters and corporate Charters, the term of this Agreement shall be for 5 years and shall be automatically renewed for additional terms of five years each, unless terminated by Majority vote of the Governing Board. Termination of this Agreement shall in no way affect a Requesting Member's duty to reimburse a Responding Member for cost incurred during a Period of Assistance, or for any other costs voluntarily incurred during the withdrawing Member's membership, which duty shall survive such

termination.

**ARTICLE XVI.  
WITHDRAWAL**

A Member or Associate Member may withdraw from this Agreement by providing written notice of its intent to withdraw to the Governing Board. Withdrawal takes effect 60 days after the Governing Board receives notice. Withdrawal from this Agreement shall in no way affect a Requesting Member's duty to reimburse a Responding Member for cost incurred during a Period of Assistance, which duty shall survive such withdrawal.

**ARTICLE XVII.  
MODIFICATION**

No provision of this Agreement may be modified, altered, or rescinded by individual Members or Associate Members of the Agreement. Modifications (except Modifications to Article III and Article XVII) require a majority vote of the Members of the Governing Board (3) or a majority vote of the Members of this Agreement. Modifications to Article III and Article XVII require a majority vote of the Members to this Agreement. Approved modifications take effect 60 days after the date upon which notice is sent to the Members, except that the addition of a new Member or Associate Member becomes effective upon execution of this Agreement.

**ARTICLE XVIII.  
NO THIRD PARTY BENEFICIARIES**

The signatories to this Agreement are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

**ARTICLE XIX.  
WAIVER**

No provision of this Agreement may be waived except in writing by the Member waiving compliance. No waiver of any provision of this Agreement shall constitute waiver of any other provision, whether similar or not, nor shall any one waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or of any other

provision.

**ARTICLE XX.**  
**SEVERABILITY**

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

**ARTICLE XXI.**  
**EXECUTION IN COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, an authorized representative of a Member or Associate Member has duly executed this Mutual Aid and Assistance Agreement as of the date referenced below. An ORWARN representative will acknowledge receipt of the Mutual Aid and Assistance Agreement and return a copy to the Member or Associate Member.

**MEMBER**

APPROVED AS TO FORM:

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Print Name \_\_\_\_\_

---

**ASSOCIATE MEMBER**

APPROVED AS TO FORM:

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Print Name \_\_\_\_\_

Affiliation or Interest in water / wastewater industry \_\_\_\_\_

---

## ORWARN ACKNOWLEDGMENT

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Print Name \_\_\_\_\_