

AGREEMENT BETWEEN THE CITY OF FREMONT AND THE CITY OF MILPITAS
FOR MUTUAL AID

This Agreement for Mutual Aid Assistance (“Agreement”) is made and entered into on _____, 2014, by and between the City of Fremont (“Fremont”) and the City of Milpitas (“Milpitas”) in Alameda County in the State of California

RECITALS

WHEREAS, Fremont and Milpitas provide emergency medical and rescue services, and fire protection services within their respective jurisdictional boundaries; and

WHEREAS the Fremont and Milpitas have each historically provided mutual aid assistance to the other upon request for the benefit of Fremont and Milpitas and now desire to formalize this arrangement and confirm the willingness of the Fremont and the Milpitas to provide emergency assistance to one another to the extent they are each capable; and

WHEREAS, it is in the best interest of Fremont and Milpitas and their respective citizens to ensure that supplemental and reciprocal assistance is available to provide expeditious response to emergency medical and rescue, fire and other emergency incidents; and

WHEREAS, each party recognizes the need for and desires to provide to the other reasonable and reciprocal exchange of emergency medical and rescue, fire and other emergency services on an as needed basis; and

WHEREAS, this Agreement is authorized and provided for by various provisions of California law, including, but not limited to Health and Safety Code section 13863 and Government Sections 8631 and 8617, and acts and statutes of the Federal Government, where applicable.

AGREEMENT

NOW, THEREFORE, in consideration of these mutual covenants, the parties hereto agree as follows:

1. PURPOSE.

- A. Intent. This Agreement is intended to provide for mutual aid response by an available emergency response unit(s) for use in fire suppression and medical and rescue and other emergency incidents within the individual jurisdictional fire boundaries of Fremont and Milpitas.
- B. Applicability In Extreme Emergency. This Agreement is intended to cover day-to-day mutual aid and shall not apply when the California Disaster and Civil Defense Mutual Aid Agreement becomes operative.

- C. Definitions. For purposes of this Agreement, the party providing mutual aid into the adjacent jurisdiction shall be identified as the “assisting agency” and the party receiving mutual aid shall be identified as the “agency having jurisdiction”.

2. MUTUAL AID REQUEST AND RESPONSE.

- A. Request. Mutual aid assistance may be requested when in the opinion of the command personnel of the agency having jurisdiction outside assistance is necessary to protect life or property. The agency having jurisdiction shall within a reasonable period of time provide the assisting agency with confirmation of the need for assistance including details regarding requested resources, timelines/schedules and locations for assistance.
- B. Response. The command personnel of the assisting agency after considering the needs of the assisting agency and the availability of resources may authorize and direct its resources to provide mutual aid assistance. The assisting agency shall within a reasonable period of time confirm to the agency with jurisdiction the details of the assistance to be provided including resources and anticipated time of response.

Mutual aid response shall consist of the closest available engine company and shall follow each agency’s respective jurisdictional guidelines and deployment plan. See ATTACHMENT A.

3. TYPES OF EMERGENCIES.

- A. Code 3 Emergencies. Code 3 emergencies which require the use of red lights and sirens by responding fire units are the only incidents for which mutual aid assistance shall be provided under this Agreement.
- B. Other Response Calls. Calls for public service, post-fire investigations, and similar responses which do not require the use of red lights and sirens by the responding fire units are not incidents for which mutual aid assistance shall be provided under this Agreement.

4. AGENCY HAVING JURISDICTION.

- A. Operational Responsibility. The highest ranking officer of the jurisdiction having authority (the “Officer in Command”) will have operational responsibility and the final authority as to strategy and tactics deployed at the incident once an officer for the agency having jurisdiction assumes command of the incident.
- B. Command Operations. The first arriving officer of the assisting agency will assume command until an officer from the jurisdiction having authority responds to the incident and assumes command. Thereafter, the assisting agency’s resources shall report to the incident commander of the agency having jurisdiction.
- 1) It shall be the responsibility of the Officer in Command to summon additional personnel and equipment, if needed, to handle the emergency.

- 2) As soon as the Officer in Command determines that no further assistance is required, the Officer in Command will inform its communications center to “cancel” any other responding units.

C. Cleanup Operations. It shall be the responsibility of the agency having jurisdiction to utilize their staffing and equipment for overhaul and cleanup operations after a fire or emergency. The assisting jurisdiction shall not be required to provide assistance for overhaul and cleanup.

5. INCIDENT COMMAND/ASSIGNMENT OF RESOURCES.

A. Command Systems. The Incident Command System (ICS) and the National Incident Command System (NIMS) will be utilized for all incident responses.

B. Assignment of Resources. Resources not pre-assigned to incidents shall officially attach themselves to an incident per the discretion of the agency having jurisdiction or by authority of their command personnel. Assigned units are expected to check into staging or directly to the command post during incidents involving more than a single resource.

C. California Firescope. The equipment and resources deployed should follow the California FIRESCOPE model or be specifically designated in each agency’s response or standards of cover plan.

D. Control of Assisting Agency’s Resources. The person in charge of the assisting agency’s human and equipment mutual aid resources shall retain control of those resources and shall direct them to meet the needs and tasks assigned by the incident commander or other appropriate officer of the agency having jurisdiction.

E. Release of Assisting Agency’s Resources. The assisting agency’s mutual aid resources shall be released by the agency having jurisdiction when the services of the assisting agency are no longer required or when the assisting agency’s resources are needed in their jurisdiction. Assisting agency resources may withdraw from the scene upon notice to the incident commander or other appropriate officer that they are needed in their jurisdiction.

6. LEGAL RELATIONSHIP. Personnel assigned to provide mutual aid assistance will remain each individual agency’s responsibility for purposes of workers compensation laws and benefits.

7. FIRE INCIDENT REPORTING. The agency having jurisdiction will be responsible for completing, filing, recording and storing all mandated local and state reports related to a mutual aid response within its jurisdiction and shall provide the assisting agency with a copy of the response report. However, if the agency having jurisdiction does not in fact respond to an incident, the assisting agency will be responsible for completing, filing, recording and storing all mandated local and state reports related to the mutual aid response (unless otherwise provided by law) and shall provide the agency having jurisdiction with a copy of the response report upon request.

8. COMPENSATION. All mutual aid services provided by the parties under this Agreement shall be performed without monetary compensation or reimbursement. Fremont and Milpitas agree that the mutual advantages, protections and services afforded by this Agreement are adequate compensation for the mutual aid services to be provided under this Agreement. The parties acknowledge their mutual intent that the value of the services provided and received by each party be equal. The parties agree that to the extent compensation is or may be available from one or more third parties as a result of an incident in which mutual aid services were provided under this Agreement, they shall cooperate to pursue such compensation and allocate any recovery pro rata in accordance with the cost incurred by each entity in responding to the incident.

9. LIABILITY; INDEMNITY.

A. Liability. Nothing in this Agreement is intended to affect the legal liability of either party to this Agreement by imposing or requiring any standard of care different than that provided by or existing in applicable law.

- 1) No party shall have any liability for failure or refusal to furnish mutual aid assistance, or for recalling or releasing resources providing mutual aid assistance. Neither party shall make a claim against the other for refusal to provide mutual aid assistance.
- 2) No debt, liability, or obligation of one party shall be the debt, obligation, or liability of another party. Each party shall be responsible for its own acts and/or omissions.
- 3) Each party shall be responsible for injuries or death to its own personnel to the extent required by law. Each party, to the extent it is at fault, shall be responsible for damage to or loss of equipment while acting within the scope of this Agreement.

B. Insurance. Each party shall procure and maintain at its own cost such insurance as is required by applicable federal and state law and as may be appropriate and reasonable in its discretion, to cover its personnel, equipment, vehicles and property, including, but not limited to, liability insurance, worker's compensation, unemployment insurance, automobile liability and property damage. Each party may self-insure when appropriate.

C. Indemnity. In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties pursuant to Government code Section 895.6, Fremont and Milpitas agree that all losses or liabilities incurred by a party shall not be shared pro rata, but instead Fremont and Milpitas agree that pursuant to Government Code Section 895.4, each party shall fully indemnify, defend and hold the other party, its officers, employees and agents, harmless from any claim, expense or cost (including court costs and reasonable attorney's fees), damage or liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in connection with any work, authority or jurisdiction delegated to such party under this Agreement. Neither party, nor any of its officers, employees or agents,

shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other party, its officers, employees or agents, under or in connection with any work, authority or jurisdiction delegated to such party under this Agreement.

10. NEAR MISS REPORTING SYSTEM. Parties to this Agreement shall participate in the National Near Miss Reporting system. Each agency shall endeavor to participate in the critique or evaluation of special incidents or incidents that are two alarms or greater. This evaluation shall include lessons learned, positives and need improvements and evaluation of alarm escalation and legitimacy.

11. EVALUATION. During the term of this Agreement, the Fire Chiefs or designee of each party shall jointly evaluate the effectiveness of the Agreement, which may include a review of the number of mutual aid incidents, any issues with the mutual aid request or response process, areas for improvements and any other issues that may have arisen in connection with the Agreement. The evaluation shall occur at such regular intervals as may be mutually agreed upon by the Fire Chiefs.

12. TERM; TERMINATION. The term of the Agreement shall commence upon its execution by both parties and unless terminated earlier as provided below, shall continue in effect through December 31, _____. This Agreement may be terminated by either party at any time during its term through its Fire Chief or designee, by providing not less than thirty (30) calendar days advance written notice of withdrawal to the other party.

13. NO THIRD PARTY BENEFICIARIES. This Agreement shall not be construed as, or deemed to be, for the benefit of any third party; and no third party shall have any right of action under this Agreement.

14. NOTICES. All notices required or contemplated by this Agreement shall be in writing and shall be delivered to the respective party as set forth in this section. Communications shall be deemed to be effective upon the first to occur of: (a) actual receipt by a party, or (b) actual receipt at the address designated below, or (c) three working days following deposit in the United States Mail of registered or certified mail sent to the address designated below. The Authorized Representative of either party may modify their respective contact information identified in this section by providing notice to the other party.

To: Fremont

To: Milpitas

15. HEADINGS. The heading titles for each paragraph of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.

16. SEVERABILITY. If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.

17. GOVERNING LAW, JURISDICTION, AND VENUE. The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Alameda. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Alameda or the County of Santa Clara.

18. MODIFICATIONS; AUTHORITY OF CHIEFS.

- A. Written Amendment. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- B. Fire Chief Authority. The Fire Chiefs shall have the authority to agree on the details relating to methods of requesting mutual aid, identification of personnel authorized to send and receive mutual aid requests, identification of equipment and personnel that will respond to mutual aid requests and any other performance or procedural measures necessary to implement this agreement.

FREMONT

MILPITAS

BY: _____
ITS: _____

BY: [Signature]
ITS: Acting Fire Chief

DATE: _____

DATE: 6-6-14

ATTACHMENT A

AGREEMENT BETWEEN THE CITY OF FREMONT AND THE CITY OF MILPITAS FOR MUTUAL AID

Last Updated August 6, 2013

1. Deployment Plan
 - A. As the providing agency, the Fremont Fire Department will typically commit no greater than One (1) Engine Company, One (1) Truck Company and One (1) Battalion Chief to the scene of a working fire.
 - B. It is also the understanding that in the Assignment of Resources (Section 5E) of this agreement, the said Engine Company of a providing agency can be utilized following the code three response to the incident for purposes of short term duration station coverage.