

Memorandum of Understanding/Mutual Aid Agreement Annex

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This Annex Provides Information and Examples for Writing Memorandums of Understanding (MOU) and Mutual Aid Agreements (MAA)

ARE YOU READY?

- *Will vendors/suppliers always have what you need during an emergency?*
- *In the event of a disaster, could a pre-written Mutual Aid Agreement increase the likelihood of FEMA reimbursement?*

What is a Memorandum of Understanding?

- ❖ A Memorandum of Understanding (MOU) is a written agreement made between two facilities, agencies, organizations or other parties to accomplish a certain goal. This agreement is not binding like a contract, and neither party is legally obligated to perform its agreed upon actions.
- ❖ MOUs written for an emergency situation describe how the parties involved will request and supply personnel, equipment, alternative facilities, supplies, and anything else needed during, or to recover from, an emergency.

What is a Mutual Aid Agreement?

- ❖ A Mutual Aid Agreement (MAA) is similar to a MOU in that it is a written, non-contractual agreement between two parties. This agreement states that both parties will assist the other in an emergency or time of need.

What is the difference between a MOU and a MAA?

- ❖ A MOU differs from a MAA in that a MOU is not necessarily a *mutual benefit* agreement. The MAA benefits both parties in that the agreement is to provide aid to *each other* in the time of need. A party entering into a MOU may agree only to help the other party, without desiring reciprocal aid.

If a facility is considering drafting an MOU or MAA with other entities, it is highly recommended that you discuss this with your counsel and local emergency management agency. They can provide guidance on what is appropriate for inclusion in a MOU or MAA.

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How to write a MOU/MAA¹

- The following elements should be included in a MOU or MAA:²
 - Definitions of key terms used in the agreement.
 - Roles and responsibilities of individual parties.
 - Procedures for requesting and providing assistance.
 - Procedures, authorities and rules for payment and reimbursement.
 - Type of acceptable payments (if any) in an emergency situation.
 - Notification procedures and interoperable communications.
 - Relationships with other agreements among jurisdictions.
 - Workers compensation insurance coverage.
 - Treatment of liability and immunity.
 - Recognition of qualifications and certifications.
 - Sharing agreements, as required.
 - Authorized officials from each of the participating jurisdictions will collectively approve and sign all MAAs and MOUs.
- Following is a quick reference list of some of the elements that could be included in a MOU:³ These elements may be applicable to writing a MAA as well.

Introduction: Briefly describe the need for the agreement, who is involved, and the importance of two parties working together. Questions to consider:

- For what capability or resource is this MOU being created?
- Which agencies are participating in the MOU?
- Why is this MOU necessary?
- What agreements are set forth by this MOU?

Purpose: Briefly describe the necessity of the resource including how and under what circumstances the resource will be used. Questions to consider:

- When will it be used?
- How will it be used?

Scope: List the parties involved in the agreement and their relationship. This section also can include level of command and level of government. Questions to consider:

- Who are the public safety, public service, and other governmental and non-governmental agencies that will use the resource?

¹ A template for writing a MAA can be found at:

<http://www.idph.state.ia.us/ems/common/pdf/mutual_aid_agreement.pdf>.

²

http://www.nh.gov/safety/divisions/fstems/ems/preparedness/documents/ems_mitigation_and_planning_resources.pdf

³ This is only a *guide*, and each institution should customize a MOU (or MAA) to fit its own needs and facilitate the purpose. The source for this information is the “Writing Guide for a Memorandum of Understanding” that was developed by Safecom and the Department of Homeland Security.

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Definitions: Define the terms associated with the resource to reduce the amount of uncertainty in the agreement. Questions to consider:

- What are the technical and operational aspects of the resource?
- Are there any community-specific terms or acronyms?

Policy: Briefly describe under what circumstances the resource can be used; this is to include who is authorized to use it, activation, timing, and anything else related to the use of the resource. Questions to consider:

- When can the resource be used?
- When should the resource be considered for use?
- Who has the ability to authorize use of the resource?
- Are there operating procedures associated with the resource? Can specific procedures be referenced?

User Procedure Requirements: Describe the obligations of being a part of this agreement and using a shared resource, if applicable. This may include training, exercises, user requirements, etc. Questions to consider:

- What training, exercise, and equipment requirements are associated with participating in this MOU?
- Are there additional requirements?
- Are there financial obligations that must be considered?

Maintenance: This section mentions the designated party or parties responsible for maintaining equipment, systems and licenses. Questions to consider:

- What maintenance requirements are associated with participating in this MOU?
- Who will own the licenses?
- Who will maintain the equipment?

Oversight: This section describes how an agency will be prepared for use of the resource. This section may also contain a description of how agencies can provide recommendations that affect policy and whether or not the other agencies accept these recommendations. Questions to consider:

- What governance structure oversees the use of this resource and enforces all requirements of this MOU?
- Who is the chair of this governance structure and how is he/she appointed?
- What are the participation requirements in this governance structure of agencies entering the MOU?
- How are issues affecting policy, recommendations, and/or subsequent change implemented by the governance structure?

Responsibility for Standard Operating Procedures (SOP) Compliance: The purpose of this section is to assign responsibility to an agency for appropriate SOPs associated with the resource. Questions to consider:

- Who is responsible for ensuring the SOPs associated with this resource are followed and that individual agency personnel are trained appropriately?
- How will compliance be carried out?

Updates to the MOU: Describe how updates are made, who has the authority to make an update, and how participating agencies will be notified. Questions to consider:

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- Who has the authority to update/modify this MOU?
- How will this MOU be updated/modified?
- Will updates/modifications require this MOU to have a new signature page verifying the understanding of changes by each participating agency?

Examples of MOUs and MAAs

- Colorado Master Mutual Aid Agreement:
<http://csfs.colostate.edu/pages/documents/Appendix-N-4-Intergov-Agrmnt-for-EM.pdf>
- California Master Mutual Aid Agreement:
<http://cms.calema.ca.gov/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=309>
- Minnesota Municipal Utilities Association:
<http://www.mmua.org/aid/pdf/FEMA-NREC%20Agreement.pdf>
- South Dakota example for local communities:
http://dps.sd.gov/emergency_services/emergency_management/images/dmgap_pd.pdf

Impact of MOUs and MAAs on Federal Emergency Management Agency Public Assistance Grants During Major Disasters

- **Federal Emergency Management Agency (FEMA)** has a Public Assistance (PA) Policy pertaining to MAAs that provides guidance on what elements a MAA should include to be fully compatible with grant funding under FEMA PA. PA Policy 9523.6 can be downloaded at:
http://www.fema.gov/government/grant/pa/9523_6.shtm.
- Many zoological institutions are owned and operated by public entities (such as a city or county), or are operated for such a governmental entity by a private non-profit. This is important since these government agencies and private non-profits could be eligible for FEMA Public Assistance grants for certain response or recovery expenses. MAAs and MOUs, preferably signed pre-disaster, may assist in documenting the eligibility of expenses. See *Business Continuity and Reimbursement Annex*.

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Benefits of a MAA in Federally Declared Disasters

Zoo A is owned by Central City and operated for Central City by Friends of Zoo A. During a major disaster (with corresponding Presidential Disaster Declaration for Public Assistance) Zoo A asks Zoo B to send personnel and equipment to help them respond and recover. Zoo B spends \$100,000 supplying this aid to Zoo A.

Without a MAA in place, Zoo A and Zoo B may not be in agreement as to if, or how much, Zoo A will reimburse Zoo B. Without a pre-existing MAA and incident documentation showing a formal request to bring in Zoo B by Incident Authorities, it may be more difficult for Zoo A to get reimbursement for the expenses paid to Zoo B. Zoo B cannot seek reimbursement directly from FEMA in any circumstances.

With a MAA in place, Zoo A notifies Central City of its need and documents city approval of activating the MAA with Zoo B. Zoo B tracks all costs (as well as in-kind contributions) in detail and submits an invoice to Zoo A. Zoo A (or Central City) reimburses Zoo B and submits the \$100,000 in eligible expenses + the value of in-kind contributions by both agencies to FEMA through the Central City Emergency Management Agency. If approved by FEMA, Zoo A (through Central City) would receive a grant for part of the cost of the response, usually 75%.

In addition, in-kind costs can be included in a Public Assistance Grant application, so use of existing equipment, volunteer labor and public donations can be counted as the local/state match. In some cases, this may allow Public Assistance applicants to be reimbursed for up to 100% of their eligible expenses.

Benefits of an MOU in an Emergency

Exotic Animal Sanctuary Z experiences intermittent power disruptions caused by aging power lines that supply the facility. The directors of the sanctuary draft an MOU with a local company to guarantee that a large generator will be available for their use, should it be needed. The MOU states that ABC Generators will supply the sanctuary with a generator of a specific size, terms of payment are stated in the agreement, and delivery and set up procedures are agreed upon in the document.

Later, the sanctuary is notified that the utility company will be repairing lines, but power may be out for up to 4 days. Exotic Animal Sanctuary Z contacts ABC Generators, and due to terms of the MOU, they are given priority status for generator delivery and set up.

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- FEMA Public Assistance Grants, and the circumstances of a major disaster, are extremely complex. It is essential for any zoological facility that might be eligible for PA funding to discuss this issue with its local emergency management agency. The agency can ensure a coordinated effort to have the appropriate MAAs and documentation in place before and during the disaster.
- Non-governmentally owned zoological facilities may not be eligible for FEMA Public Assistance grants. Additionally, only about 5% of local disasters ever reach the level of a Federal Declaration. MAAs, however, will help identify sources of assistance and pre-determine how costs will be managed, regardless of whether or not FEMA PA is available.