

INTER-COUNTY MUTUAL AID AGREEMENT
Omnibus Agreement
2010 Revision

This OMNIBUS AGREEMENT is made and entered into by the undersigned counties (hereinafter referred to as "Party Counties") to enable them to provide Emergency Assistance to each other during an Emergency.

WHEREAS, the Party Counties have expressed mutual interest in the establishment of an Omnibus Agreement to facilitate and encourage Emergency Assistance among counties; and

WHEREAS, in the event of an Emergency, a Party County who has executed this Omnibus Agreement may need Emergency Assistance in the form of supplemental personnel, equipment, materials or other support; and

WHEREAS, each Party County may own and maintain equipment, supplies, and materials and employ trained personnel for a variety of public services and is willing, under certain conditions, to lend its supplies, materials, equipment, and/or personnel to other Party Counties in the event of an emergency; and

WHEREAS, the original version of this Omnibus Agreement became effective in August 2005; and

WHEREAS, based on subsequent use and review of the Omnibus Agreement, representatives of the Party Counties have drafted revised language to clarify the agreement's terms and conditions.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, each undersigned County agrees as follows:

Article I – APPLICABILITY

This Omnibus Agreement is available for execution by all counties in Oregon. Execution of the Omnibus Agreement by a County will occur when the County signs an identical version of this Omnibus Agreement.

Article II – DEFINITIONS

- A. Assistance Costs are the costs associated with providing Emergency Assistance and include costs for equipment, personnel, services, materials, and supplies. For loaned equipment and personnel, Assistance Costs are those that extend beyond the first twelve (12) hours (usual and customary costs) incurred by the Lender in providing

any asset requested. Further agreements regarding Assistance Costs appear in Articles X, XI and XII, which address loans of equipment, materials and supplies, and personnel respectively.

- B. Borrower means a Party County who has made a request for Emergency Assistance and has received a commitment(s) from another Party County to deliver Emergency Assistance pursuant to the terms of this Omnibus Agreement.
- C. Contact Person(s) means the person or persons designated by each Party County to request Emergency Assistance from or grant Emergency Assistance to another Party County pursuant to the terms of this Omnibus Agreement.
- D. County means an entire county government. Though the point of contact for this agreement is the Emergency Program Manager, all functions or departments of county government are included in this Omnibus Agreement, as Emergency Assistance could be provided by any discipline or department including, but not limited to, law enforcement, public works, health services, social services, building officials, engineers, information services, adult detention, and craft or tradesmen.
- E. Emergency includes, but is not limited to, a human-caused or natural event or circumstances within the area of operation of any Party County causing or threatening loss of life, damage to the environment, injury to person or property, and/or human suffering or financial loss, such as: fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills or releases of hazardous materials, contamination, utility or transportation emergencies, disease, infestation, civil disturbance, riots, acts of terrorism or sabotage, and use of weapons of mass destruction; and said event or circumstance is or is likely to be beyond the capacity of an affected Party County or Party Counties, in terms of personnel, equipment, materials, and/or supplies, thereby requiring Emergency Assistance.
- F. Emergency Assistance means personnel, services, equipment, materials, and/or supplies offered during an Emergency by a Lender and accepted by a Borrower to assist in providing or restoring county government services when those services have been disrupted by the Emergency.
- G. Emergency Contact Information Form is the form to be submitted by each Party County that lists names, addresses, and 24-hour numbers for the County's Contact Person(s). The phone number of a dispatch office

or other facility staffed 24 hours-a-day that is capable of contacting the Contact Person(s) is also required.

- H. Emergency Program Manager means the sheriff or other person appointed by the executive officer or governing body of a Party County pursuant to ORS 401.305.
- I. Lender means a Party County who has agreed to deliver Emergency Assistance to another Party County pursuant to the terms and conditions of this Omnibus Agreement.
- J. Omnibus Agreement means this Inter-County Mutual Aid Agreement, which includes identical agreements executed in counterparts binding the executing counties to its terms and conditions to provide and receive Emergency Assistance. To be effective for purposes of receiving Emergency Assistance, this Omnibus Agreement must be fully executed and received by each Party County's Emergency Program Manager.
- K. Termination Date is the date upon which this Omnibus Agreement terminates pursuant to Articles V and XVI.

Article III – PARTICIPATION

Participation in this Omnibus Agreement is purely voluntary as is the provision of Emergency Assistance. No Party County shall be liable to another Party County, or be considered to be in breach of or default under this Omnibus Agreement, on account of any delay in or failure to perform any obligation, except to make payment as specified in this Omnibus Agreement. However, each Party County who executes this Omnibus Agreement is expected to:

- A. Ensure that every other Party County is provided the County's most current Emergency Contact Information Form in a timely manner;
- B. Participate in scheduled meetings to coordinate operational and administrative issues to the maximum extent possible; and
- C. Participate in exercises intended to test and evaluate the operational and administrative procedures developed to implement this Omnibus Agreement.

Article IV – ROLES OF EMERGENCY PROGRAM MANAGERS OF PARTY COUNTIES

- A. Each Party County agrees that its Emergency Program Manager or designee will serve as its representative in any meeting to address administration and implementation of this Omnibus Agreement.

B. The Emergency Program Managers from the Party Counties shall together:

1. Identify the Emergency Program Manager or designee from one of the Party Counties to serve as the administrator of this Omnibus Agreement.
2. Meet annually or more often as necessary to review this Omnibus Agreement, develop and maintain procedures for implementation and administration, and evaluate lessons learned from actual use of this Omnibus Agreement.
3. Identify industry standard rates pursuant to Article X of this Omnibus Agreement.
4. Develop planning details associated with being a Borrower or Lender under the terms of this Omnibus Agreement.

C. The Emergency Program Manager or designee of each Party County shall, to the extent reasonably possible:

1. Participate in any meetings convened to address administration and implementation of this Omnibus Agreement.
2. Ensure appropriate staff of the Party County are informed of pertinent implementation and coordination decisions and procedures.
3. Maintain a manual containing a master copy of this Omnibus Agreement (as amended or revised), a list of Party Counties, and a copy of each Party County's Emergency Contact Information Form.
4. Provide the Emergency Program Manager or designee of the Party County selected to serve as the administrator of this Omnibus Agreement with a copy of the County's Emergency Contact Information Form at the annual meeting of the Emergency Program Managers or whenever information in the form changes.
5. Notify all Party Counties if the County terminates its participation in this Omnibus Agreement.

- D. The Emergency Program Manager or designee of the Party County selected to serve as the administrator of this Omnibus Agreement shall, to the extent reasonably possible:
1. Notify all Party Counties whenever a new County executes the Omnibus Agreement.
 2. Provide each Party County with a copy of the signature page of each newly executed Omnibus Agreement.
 3. Provide each Party County with a copy of any new or updated Emergency Contact Information Form submitted by a Party County.
 4. Maintain and distribute checklists and other implementing procedures developed by the Party County Emergency Program Managers to assist Party Counties with the details of being a Borrower or Lender under the terms of this Omnibus Agreement.
 5. Organize and facilitate the annual meetings of the Party County Emergency Program Managers.
 6. Maintain a record of official documents associated with the development, adoption, implementation, and maintenance of this Omnibus Agreement including signed original agreements, Emergency Contact Information Forms, implementing procedures, and meeting agendas and minutes.

Article V – TERMS AND TERMINATION

- A. This Omnibus Agreement, which is the first revision of the original agreement, is effective upon execution by two-thirds of the counties party to the original Omnibus Agreement as outlined in Article XVI, Modifications.
- B. A Party County opting to terminate its participation in this Omnibus Agreement shall provide written notice to the Emergency Program Manager of each Party County. Notice of termination becomes effective upon receipt by the Emergency Program Managers. Any Party County terminating its participation remains liable for all obligations incurred during its period of participation, until the obligation is satisfied.

Article VI – PAYMENT FOR EMERGENCY ASSISTANCE

- A. A Borrower shall pay a Lender for all valid and invoiced costs associated with Emergency Assistance provided by the Lender within sixty (60)

days of receipt of the Lender's invoice. The Lender, in its sole discretion, may elect to extend the repayment deadline upon written request of the Borrower.

- B. In the event a Lender provides equipment, supplies or materials, the Lender shall have the option to accept cash or in-kind payment for the equipment, supplies or materials provided.

Article VII – INDEPENDENT CONTRACTOR

- A. Each Lender shall be and operate as an independent contractor of the Borrower in the provision of any Emergency Assistance. Employees of the Lender shall, at all times while performing Emergency Assistance, continue to be employees of the Lender and shall not be deemed employees of the Borrower for any purpose. Wages, hours, and other terms and conditions of employment of the Lender shall remain applicable to all of its employees who perform Emergency Assistance. Each Lender shall be solely responsible for payment of its employees' wages, any required payroll taxes and any benefits or other compensation. A Borrower shall not be responsible for paying any wages, benefits, taxes, or other compensation directly to a Lender's employees. The costs associated with borrowed employees are subject to the reimbursement process outlined in Article XII.
- B. In no event shall a Lender or its officers, employees, agents, or representatives be authorized (or represent that they are authorized) to make any representation, enter into any agreement, waive any right, or incur any obligation in the name of, on behalf of or as agent for a Borrower under or by virtue of this Omnibus Agreement.

Article VIII – REQUESTS FOR EMERGENCY ASSISTANCE

Requests for Emergency Assistance shall be directed to the designated Contact Person(s) on the Emergency Contact Information Forms provided by the Party Counties. The extent to which a Lender provides any Emergency Assistance shall be at the Lender's sole discretion. In the event an Emergency impacts a large geographical area that activates either federal or state emergency laws, this Omnibus Agreement shall remain in effect until or unless it conflicts with such federal and/or state laws.

Article IX – GENERAL NATURE OF EMERGENCY ASSISTANCE

Emergency Assistance will be in the form of resources, such as equipment, supplies, materials, and personnel or the direct provision of services. Execution of the Omnibus Agreement shall not create any duty to respond on the part of any Party County. A Party County shall not be held liable for failing to provide

Emergency Assistance. A Party County has the absolute discretion to decline to provide any requested Emergency Assistance and to withdraw resources it has provided at any time without incurring any liability. Resources are “loaned” and “borrowed” with reimbursement and terms of exchange varying with the type of resource as defined in Articles X through XII. The Party Counties recognize that time is critical during an Emergency and diligent efforts will be made to respond to a request for resources as rapidly as possible, including any notification(s) that requested resources are not available.

Article X – LOANS OF EQUIPMENT

At the sole discretion of the Lender, equipment such as construction equipment, vehicles, tools, pumps, motors, etc., may be made available upon request of a Party County. The first twelve (12) hours of use will be without cost to the Borrower. After the first twelve (12) hours, the cost to the Borrower for use of equipment shall be the Lender’s actual costs or the Lender’s costs based on current equipment rates. If no written rates have been established, the cost to the Borrower shall be based on the hourly operating costs set forth in an industry standard publication as selected by the Party County Emergency Program Managers, or as mutually agreed between the Borrower and Lender. For this Omnibus Agreement, equipment use begins at a time mutually agreed to by the Borrower and the Lender.

Equipment loans are subject to the following conditions:

- A. At the option of the Lender, equipment may be loaned with an operator. See Article XII for terms and conditions applicable to use of borrowed personnel.
- B. Each Lender shall endeavor to provide equipment in good working order. All equipment is provided “as is,” with no representations or warranties as to its fitness for a particular purpose or its general condition.
- C. Each Borrower shall, at its own expense, supply all fuel, lubrication and necessary maintenance for loaned equipment. The Borrower will take proper precaution in the operation, storage and maintenance of the Lender’s equipment.
- D. Loaned equipment shall be returned to the Lender upon release by the Borrower, or immediately upon the Borrower’s receipt of an oral or written request from the Lender for the return of the equipment. When requested to return equipment to the Lender, the Borrower shall make every effort to return the equipment to the Lender within 24 hours of the request. In all cases, the Borrower shall notify the Lender when the Lender’s equipment is released.

- E. Lender's costs related to the transportation, handling, and loading/unloading of equipment shall be chargeable to the Borrower. Lender shall provide copies of invoices for such charges where provided by outside sources and shall provide hourly accounting of charges for the Lender's employees who perform such services.
- F. Without prejudice to a Lender's right to indemnification under Article XIV, in the event loaned equipment is lost or damaged while in the custody and/or use of the Borrower, or while being returned by the Borrower to the Lender, the Borrower shall reimburse the Lender for the reasonable cost of replacing or repairing said equipment. If the damaged equipment cannot be repaired within a time period specified by the Lender, then the Borrower shall reimburse the Lender for the cost of replacing such equipment with equipment which is of equal condition and capability. Any determinations of what constitutes "equal condition and capability" shall be at the discretion of the Lender. If the Lender must lease or rent a piece of equipment while its equipment is being repaired or replaced, the Borrower shall reimburse the Lender for such costs. The Borrower shall have the right of subrogation for all claims against persons other than parties to this Omnibus Agreement who may be responsible in whole or in part for damage to the equipment. The Borrower shall not be liable for damage caused by the sole negligence of the Lender's operators.

Article XI – LOANS OF MATERIALS AND SUPPLIES

A Borrower shall reimburse a Lender in-kind or at the Lender's actual replacement cost, plus handling charges, for use of partially consumed or non-returnable materials and supplies, as mutually agreed between the Borrower and Lender. Other reusable materials and supplies, which are returned (unused) to the Lender in clean, damage-free, condition, shall not be charged to the Borrower and no rental fee will be charged. The Lender shall determine whether items returned are "clean and damage-free" and items shall be treated as partially consumed or non-returnable if they are found to be damaged.

Article XII – LOANS OF PERSONNEL

- A. A Lender may, at its option, make its employees available to a Borrower. Employees will be provided without cost to the Borrower for the first twelve (12) hours of service, after which they will be loaned at the Borrower's expense equal to the Lender's full costs, including employee salary or hourly wages, call back or overtime costs, benefits, and overhead. For this Omnibus Agreement, employee service begins at a time mutually agreed to by the Borrower and the Lender. All costs shall be consistent with Lender's personnel union contracts, if any, or other conditions of employment. Costs to feed and house loaned employees,

if necessary, shall be chargeable to and paid by the Borrower. The Borrower is responsible for assuring arrangements are made, as necessary, to provide for the safety, housing, meals, and transportation to and from job sites/housing sites for loaned employees.

- B. Loaned employees shall remain under the administrative control of the Lender, but will be under the operational control of the emergency management authorities of the Borrower. The Lender shall not be liable for cessation or slowdown of work if the Lender's employees decline or are reluctant to perform any assigned task if said employees judge such task to be unsafe. A request for loaned employees to direct the activities of others during a particular response operation does not relieve the Borrower of any responsibility or create any liability on the part of the Lender for decisions and/or consequences of the response operation. When supervisory employees are loaned, the Lender may make stipulations on the scope and duties of those employees.
- C. Any valid licenses issued to loaned employees by the Lender relating to the skills required for the emergency work may be recognized by the Borrower during the period of the Emergency and for purposes related to the Emergency.
- D. When requested to return employees to the Lender, the Borrower shall make every effort to return the employees to the Lender immediately upon receipt of the request. The Borrower shall notify the Lender when the Lender's employees are released.

Article XIII – RECORD KEEPING

Time sheets and/or daily logs showing hours worked and equipment, supplies and materials used or provided by the Lender will be recorded on a shift-by-shift basis by the Lender and/or the loaned employee(s) and will be provided to the Borrower as needed. If no employees are loaned, the Lender will provide shipping records for materials, supplies and equipment, and the Borrower is responsible for any required documentation of use of materials, supplies and equipment for state or federal reimbursement. Under all circumstances, the Borrower remains responsible for ensuring that the amount and quality of all documentation is adequate to enable disaster reimbursement.

Article XIV – INDEMNIFICATION AND LIMITATION OF LIABILITY

- A. INDEMNIFICATION. Except as provided in Paragraph B below, to the fullest extent permitted by applicable law, the Borrower releases and shall indemnify, hold harmless and defend each Lender and its officers, employees and agents from and against any and all costs, including costs of defense, claims, judgments, or awards of damages asserted or

arising directly or indirectly from, on account of, or in connection with providing Emergency Assistance to the Borrower, whether arising before, during or after performance of the Emergency Assistance and whether suffered by any of the Party Counties or any person or entity.

The Borrower agrees that its obligation under this section extends to any claim, demand and/or cause of action brought by or on behalf of any of its employees or agents. For this purpose, the Borrower, hereby waives, as respects any indemnity only, any immunity that would otherwise be available against such claims under the workers' compensation coverage requirements of ORS Chapter 656.

- B. **ACTIVITIES IN BAD FAITH OR BEYOND SCOPE.** No Party County shall be required under this Omnibus Agreement to indemnify, hold harmless and defend any other Party County from any claim, loss, harm, liability, damage, cost, or expense caused by or resulting from the activities of any Party County's officers, employees, or agents acting in bad faith or performing activities beyond the scope of the duties assigned by the Borrower or a person granted supervisory authority by the Borrower.
- C. **LIABILITY FOR PARTICIPATION.** In the event of any liability, claim, demand, action, or proceeding, of whatever kind or nature, arising from the rendering of Emergency Assistance through this Omnibus Agreement, the Borrower agrees to indemnify, hold harmless, and defend, to the fullest extent of the law, each signatory to this Omnibus Agreement whose only involvement in the transaction or occurrence, which is the subject of such claim, action, demand, or proceeding, is the execution and approval of this Omnibus Agreement.
- D. **DELAY/FAILURE TO RESPOND.** No Party County shall be liable to another Party County for, or be considered in breach of or default under this Omnibus Agreement on account of any delay in or failure to perform any obligation under this Omnibus Agreement, except to make payment as specified in this Omnibus Agreement.
- E. **COUNTY LITIGATION PROCEDURES.** Each Party County seeking to be released, indemnified, held harmless, or defended under this article with respect to any claim shall promptly notify the Borrower of such claim and shall not settle such claim without prior consent of the Borrower, which consent shall not be unreasonably withheld. Such Party County shall have the right to participate in the defense of said claim to the extent of its own interest. Party County personnel shall cooperate and participate in legal proceedings if requested by the Borrower and/or required by a court of competent jurisdiction.

Article XV – WORKERS’ COMPENSATION AND EMPLOYEE CLAIMS

All Lender employees made available to a Borrower shall remain the general employees of the Lender while engaged in and carrying out duties, functions or activities pursuant to this Omnibus Agreement, and each Party County shall remain fully responsible as the employer for all taxes, assessments, fees, premiums, wages, withholdings, workers’ compensation, and other direct and indirect compensation, benefits, and related obligations with respect to its employees. Likewise, each Party County shall provide workers’ compensation in compliance with statutory requirements of the state of Oregon.

Article XVI – MODIFICATIONS

No provision of this Omnibus Agreement may be modified, altered, or rescinded by a Party County without two-thirds concurrence of the Party Counties. Proposed modifications to this Omnibus Agreement must be made in writing and will not become effective until approved by two-thirds of the Party Counties. Each Party County must either approve a modification or notify all other Party Counties of its decision not to approve the modification. Approved modifications must be signed by an authorized representative of each Party County. The currently approved version of the Omnibus Agreement remains in force if a proposed modification is not ratified by two-thirds of the Party Counties. If and when a proposed modification is ratified by two-thirds of the Party Counties, the prior version of the agreement is terminated.

Article XVII – NON-EXCLUSIVENESS AND OTHER AGREEMENTS

- A. This Omnibus Agreement is not intended to be exclusive among the Party Counties. Any Party County may enter into separate Emergency Assistance agreements with any other entity. No such separate agreement shall terminate any responsibility under this Omnibus Agreement.
- B. Other agreements for Emergency Assistance between any Party Counties are unaffected by this Omnibus Agreement and remain in effect until separately terminated. When another agreement exists at the time a request for Emergency Assistance is made, the Borrower and Lender should be clear about the agreement under which the request is being made and by which the Assistance Costs will be paid.
- C. Any Party County may donate resources to or share resources with any other Party County outside the terms of this Omnibus Agreement subject to any terms or conditions negotiated by the Party Counties at the time the resources are provided.

Article XVIII – GOVERNMENTAL AUTHORITY

This Omnibus Agreement is subject to the laws, rules, regulations, orders, and other requirements, now or as amended, of all governmental authorities having jurisdiction over any Emergency covered by this Omnibus Agreement.

Article XIX – NO DEDICATION OF FACILITIES

- A. No undertaking by a Party County to another Party County under any provision of this Omnibus Agreement shall constitute a dedication of the facilities or assets of such Party County, or any portion thereof, to the public or to the other Party County.
- B. Nothing in this Omnibus Agreement shall be construed to give a Party County any right of ownership, possession, use, or control of the facilities or assets of another Party County.

Article XX – NO PARTNERSHIP

This Omnibus Agreement shall not be interpreted or construed to create an association, joint venture or partnership among the Party Counties or to impose any partnership obligation or liability upon any Party County. Further, no Party County shall be considered an agent of any other Party County or otherwise have authority to bind any other Party County.

Article XXI – NO THIRD PARTY BENEFICIARY

Nothing in this Omnibus Agreement shall be construed to create any rights in or duties to any third party, nor any liability to or standard of care in reference to any third party. This Omnibus Agreement shall not confer any right or remedy upon any person other than the Party Counties. This Omnibus Agreement shall not release or discharge any obligation or liability of any third party to any Party County.

Article XXII – ENTIRE AGREEMENT

This Omnibus Agreement constitutes the entire agreement, though other existing agreements of the Party Counties may take precedence over certain concepts outlined in this Omnibus Agreement.

Article XXIII – SUCCESSORS AND ASSIGNS

This Omnibus Agreement is not transferable or assignable, in whole or in part, and any Party County may terminate its participation in this Omnibus Agreement subject to Article V.

Article XXIV – GOVERNING LAW

This Omnibus Agreement shall be interpreted, construed, and enforced in accordance with the laws of the state of Oregon.

Article XXV – VENUE

Any action arising from this Omnibus Agreement shall be brought in a County where the Emergency occurred.

Article XXVI – TORT CLAIMS

It is not the intention of this Omnibus Agreement to remove from any of the Party Counties any protection provided by applicable tort claims laws. However, between a Borrower and a Lender, the Borrower retains full liability to the Lender for any claims brought against the Lender as described in other provisions of this Omnibus Agreement.

Article XXVII – WAIVER OF RIGHTS

Any waiver at any time by any Party County of its rights with respect to a default under this Omnibus Agreement, or with respect to any other matter arising in connection with this Omnibus Agreement, shall not constitute or be deemed a waiver with respect to any subsequent default or other matter arising in connection with this Omnibus Agreement. Any delay in asserting or enforcing any right, except those related to the statutes of limitations, shall not constitute or be deemed a waiver.

Article XXVIII – INVALID PROVISION

The invalidity or unenforceability of any provision of this Omnibus Agreement shall be construed in all respects as if such invalid or unenforceable provision was omitted.

Article XXIX – NOTICES

Any notice, demand, information, report, or item otherwise required, authorized, or provided for in this Omnibus Agreement shall be given in writing and shall be deemed properly given if (i) delivered personally, (ii) transmitted and received by telephone facsimile device, or electronically, and confirmed by telephone, or (iii) sent by United States Mail, postage prepaid, to the Party County Emergency Program Managers at the address designated in each Party County's Emergency Contact Information Form.

SIGNATURE PAGE
OMNIBUS INTER-COUNTY MUTUAL AID AGREEMENT
2010 REVISION

IN WITNESS WHEREOF, the PUBLIC ENTITY _____ (PARTY COUNTY) has caused this OMNIBUS AGREEMENT for Emergency Assistance to be executed by duly authorized representatives as of the date of their signatures below:

Signature of Officer	Date	Officer's Title
Signature of Officer	Date	Officer's Title
Signature of Officer	Date	Officer's Title
Signature of Counsel	Date	Counsel's Title

Name and title of primary Contact Representative: _____	Name and title of alternate Contact Representative: _____
Address: _____ _____	Address: _____ _____
Phone: _____	Phone: _____
Fax: _____	Fax: _____
E-mail: _____	E-mail: _____

1. Send the **original OMNIBUS AGREEMENT Signature Page** (this page) for further distribution, to:
 Krista Carter, Emergency Management Program Coordinator
 Marion County
 5155 Silverton Road NE, Salem, Oregon 97305
 (503) 588-5108
kkcarter@co.marion.or.us
2. Retain a **second original OMNIBUS AGREEMENT Signature Page** for your records (two sets are required)