

**RESOLUTION NO. 2073**

**A RESOLUTION OF THE CITY OF WILSONVILLE ADOPTING THE INTERGOVERNMENTAL AGREEMENT FOR BETWEEN THE CITY OF WILSONVILLE, CLACKAMAS COUNTY, AND OTHER CITIES AND SPECIAL DISTRICTS IN CLACKAMAS COUNTY, OREGON WHO ALSO SIGN THE AGREEMENT FOR MUTUAL AID**

WHEREAS, City of Wilsonville is responsible for the preparation and mitigation of, and response and recover from emergencies or disasters that could potentially impact the City; and

WHEREAS, on October 3, 2005, the City Council of the City of Wilsonville passed Resolution 1959, "Wilsonville State of Emergency Resolution", which provides authority to declare a state of emergency and impose emergency measures; and

WHEREAS, such emergency measures include, but are not limited to implementing mutual aid agreements; and

WHEREAS, on October 3, 2005, the City Council of the City of Wilsonville passed Resolution 1961 adopting the Emergency Management Plan outlining concepts, authorities & policies;

WHEREAS, the Emergency Management Plan supports the use of mutual aid agreements; and

WHEREAS, it is in the best interest of the City of Wilsonville, Clackamas County and other Cities and Special Districts in the County to provide each other equipment, supplies and/or personnel in support of emergency and disaster response/recovery efforts; and

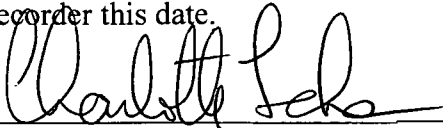
WHEREAS, the parties have authority to enter into this Agreement pursuant to ORS 401;

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

Section 1. The City Council hereby adopts the "Clackamas County Intergovernmental Mutual Aid Agreement" attached to this Resolution as Exhibit A and incorporated by this reference, and directs the City Manager or her designee to execute same.

Section 2. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 17<sup>th</sup> day of September, 2007, and filed with the Wilsonville City Recorder this date.

  
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CHARLOTTE LEHAN, Mayor

ATTEST:

  
\_\_\_\_\_  
Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Lehan	Yes
Councilor Kirk	Excused
Councilor Núñez	Yes
Councilor Knapp	Yes
Councilor Ripple	Yes

CLACKAMAS COUNTY  
INTERGOVERNMENTAL MUTUAL AID AGREEMENT  
Omnibus Agreement

This OMNIBUS AGREEMENT is made and entered into by Clackamas County and the undersigned cities and special districts (hereafter referred to as "Participants") to enable them to provide Emergency Assistance to each other during times of emergency.

WHEREAS, the Participants have expressed mutual interest in the establishment of an Omnibus Agreement to facilitate and encourage Emergency Assistance within Clackamas County; and

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

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

WHEREAS, the proximity of the Participants enables them to provide Emergency Assistance to each other;

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

Article I – APPLICABILITY

This Omnibus Agreement is available for execution to all cities and special districts in Clackamas County. Execution of the Omnibus Agreement by a Participant will occur when the Participant signs an identical version of this Omnibus Agreement.

Article II – DEFINITIONS

- A. "Assistance Costs" mean any direct equipment costs and labor costs that extend beyond the first eight (8) hours (usual and customary costs) incurred by the Lender in providing any asset requested. The Lender is expected to absorb the total labor costs for assistance that takes less than eight (8) hours, and is expected to absorb the first eight (8) hours of labor costs in an extended event. The labor costs, including overtime costs, will be absorbed by the lender, until the borrower uses borrowed employees more than eight (8) hours, at which time the labor costs will be incurred by the borrowing Participant. For this agreement, the time begins when the lending agency makes

employees available. Further agreements regarding costs appear in Article XII, Loans of Personnel.

- B. "Borrower" means a Participant who has adopted, signed and subscribes to this Omnibus Agreement and has made a request for Emergency Assistance and has received commitment(s) to deliver Emergency Assistance pursuant to the terms of this Omnibus Agreement.
- C. "Emergency Assistance Contact Person(s)" means the person or persons designated by each Participant to request Emergency Assistance from or grant Emergency Assistance to another Participant pursuant to the terms of this Omnibus Agreement.
- D. "Participant" means the entire county, city or special district and all functions or resources of Participants are implicated in this Omnibus Agreement. Emergency Assistance could be provided by any function or agency 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 Participant causing or threatening loss of life, damage to the environment, injury to person or property, 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, use of weapons of mass destruction; said event being or is likely to be beyond the capacity of any affected Participant, in terms of personnel, equipment and facilities, thereby requiring Emergency Assistance.
- F. "Emergency Assistance" means employees, services, equipment, materials, or supplies offered during an Emergency by the Lender and accepted by the Borrower to assist in maintaining or restoring normal government services when such service has been disrupted by acts of the elements, equipment malfunctions, accidents, terrorism/sabotage and other occurrences where Emergency Assistance from other Participants is necessary or advisable, as determined by the requesting Participant.
- G. "Emergency Contact Information Form" is the form to be submitted to County Emergency Management by each Participant that lists names, addresses, and 24 hour numbers of the Contact Person(s) of each Participant. Alternatively, the phone number of a dispatch office staffed 24 hours a day that is capable of contacting the Contact Person(s) is acceptable.
- H. "Lender" means a Participant who has subscribed to this Omnibus Agreement and has agreed to deliver Emergency Assistance to another Participant pursuant to the terms and conditions of this Omnibus Agreement.

- I. "Omnibus Agreement" means identical agreements executed by counterparts which bind the executing Participant to its terms and conditions to provide and receive Emergency Assistance. The terms and conditions of the Omnibus Agreements are all identical and the execution of an Omnibus Agreement by a Participant binds that Participant to all other Participants who have executed an identical Omnibus Agreement in counterparts. To be effective for purposes of receiving Emergency Assistance, this Omnibus Agreement must be fully executed by the Subscribing Participant's Board of Commissioners, City Council, or Executive Board.
- J. "Termination Date" is the date upon which this Agreement terminates pursuant to Article. V.

### Article III – PARTICIPATION

Participation in this Omnibus Agreement is purely voluntary and at the sole discretion of the requested Lender. No Participant shall be liable to another Participant, 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 under this Omnibus Agreement, except to make payment as specified in this Omnibus Agreement. However, Participants who execute the Omnibus Agreement are expected to:

- A. Ensure that other Participants are timely provided their most current Emergency Contact Information.
- B. Participate in scheduled meetings to coordinate operational and implementation issues to the maximum extent possible.

### Article IV – ROLE OF EMERGENCY ASSISTANCE CONTACT PERSON OF PARTICIPANTS

Participants agree to designate an Emergency Assistance Contact Person or designee to serve as the representative of the Participant in any meeting to work out the language or implementation of this Omnibus Agreement.

The Emergency Assistance Contact Person for the County is the Director, Department of Emergency Management. The Director shall, to the extent reasonably possible:

- A. Convene any meetings convened on the implementation of this Omnibus Agreement.
- B. Obtain and communicate to Participant Emergency Assistance Contacts the discussion items and decisions of the meeting, as they bear on interoperability among Participants.
- C. Maintain the master copy of this Omnibus Agreement (as amended) and an original signature copy from each Participant.

- D. Notify all Participants whenever a new Participant executes the Omnibus Agreement and provide each Participant with a copy of the signature page of newly executed Omnibus Agreement(s).
- E. Provide each Participant with copies of the Emergency Contact Information Forms provided by other Participants.
- F. Notify all Participants whenever a Participant terminates its participation in this Omnibus Agreement.

The Emergency Assistance Contact Person for each Participant shall, to the extent reasonably possible:

- A. Participate in any meetings convened on the implementation of this Omnibus Agreement.
- B. Maintain a copy of this Omnibus Agreement (as amended) and a list of Participants.
- C. Maintain Emergency Assistance Contact Information provided by other Participants.

#### Article V – TERMS AND TERMINATION

- A. This Omnibus Agreement is effective upon execution by two or more Participants.
- B. A Participant opting to terminate this Omnibus Agreement shall provide written termination notification to County Emergency Management and all Participants. Notice of termination becomes effective upon receipt by County Emergency Management. Any terminating Participant shall remain liable for all obligations incurred during its period of participation, until the obligation is satisfied.

#### Article VI – PAYMENT FOR SERVICES AND ASSISTANCE

Borrower shall pay the Lender for all valid and invoiced Assistance Costs within sixty (60) days of receipt of the Lender's invoice, for all of the Emergency Assistance services provided by the Lender. Lender, in its sole discretion, may elect to extend the repayment deadline, upon the written request of Borrower. In the event the Lender provides equipment, supplies or parts, the Lender shall have the option to accept payment of cash or in kind for the equipment, supplies or parts supplied.

#### Article VII – INDEPENDENT CONTRACTOR

Lender shall be and operate as an independent contractor of Borrower in the performance of any Emergency Assistance. Employees of Lender shall at all times while performing Emergency Assistance continue to be employees of Lender and shall not be deemed employees of Borrower for any purpose. Wages, hours, and other terms and conditions of employment of Lender shall remain applicable to all of its employees who perform Emergency Assistance. Lender shall be solely responsible for payment of its employees' wages, any required payroll taxes and any benefits or other compensation. Borrower shall not be responsible for paying any wages, benefits, taxes, or other compensation directly to the Lender's employees. The costs associated with borrowed personnel are subject to reimbursement process outlined in Article XII. In no event shall 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 Borrower under or by virtue of this Omnibus Agreement unless expressly authorized in writing by the Borrower.

#### Article VIII – REQUESTS FOR EMERGENCY ASSISTANCE

Requests for Emergency Assistance shall be directed to the designated contact person(s) on the contact list provided by the Participants. The extent to which the Lender provides any Emergency Assistance shall be at the Lender's sole discretion. In the event the emergency impacts a large geographical area that activates either Federal or State emergency laws, this Agreement shall remain in effect until or unless this Agreement conflicts with such Federal and State Laws.

#### Article IX – GENERAL NATURE OF EMERGENCY ASSISTANCE

Emergency Assistance will be in the form of resources, such as equipment, supplies, and personnel or the direct provision of services. The execution of the Omnibus Agreement shall not create any duty to respond on the part of any Participant. A Participant shall not be held liable for failing to provide Emergency Assistance. A Participant 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 "borrowed" with reimbursement and terms of exchange varying with the type of resource as defined in Articles X through XII. The Participants 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 may be made available upon request of a Participant. The first eight (8) hours of use will be without cost to the Borrower, after which use of equipment, such as construction equipment, road barricades, vehicles, tools, pumps and motors, shall be at the Lender's actual costs or their current equipment rate; or if no written rates

have been established, at the hourly operating costs set forth in an industry standard publication, or as mutually agreed between Borrower and Lender. Equipment and tool loans are subject to the following conditions:

1. At the option of the Lender, loaned equipment may be loaned with an operator. See Article XII for terms and conditions applicable to use of borrowed personnel.
2. 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 notice from the Lender for the return of the equipment. When notified to return equipment to a Lender, the Borrower shall make every effort to return the equipment to the Lender's possession within 24 hours following notification.
3. Borrower shall, at its own expense, supply all fuel, lubrication and necessary maintenance for loaned equipment. The Borrower will take proper precaution in its operation, storage and maintenance of Lender's equipment. 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 particular purpose, or general condition.
4. 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 Lender's employees who perform such services.
5. 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 Borrower to the Lender, Borrower shall reimburse the Lender for the reasonable cost of repairing said damaged equipment. If the equipment cannot be repaired within a time period indicated by the Lender, then Borrower shall reimburse 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 Lender must lease or rent a piece of equipment while the Lender's equipment is being repaired or replaced, Borrower shall reimburse Lender for such costs. 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. Borrower shall not be liable for damage caused by the sole negligence of Lender's Operators.

#### Article XI – EXCHANGE OF MATERIALS AND SUPPLIES



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

#### Article XII – LOANS OF PERSONNEL

Lender may, at its option, make such employees or volunteers as are willing to participate available to Borrower. Volunteers shall be provided at no cost to Borrower. Employees will be provided without cost to the Borrower for the first eight (8) hours of service, after which they will be loaned at Borrower's expense equal to Lender's full costs, including employee's salary or hourly wages, call back or overtime costs, benefits and overhead, and consistent with Lender's personnel union contracts, if any, or other conditions of employment. Costs to feed and house loaned personnel, if necessary, shall be chargeable to and paid by the Borrower. The Borrower is responsible for assuring such arrangements as may be necessary to provide for the safety, housing, meals, and transportation to and from job sites/housing sites (if necessary) for loaned personnel. The Participants Emergency Assistance Contact Person or their designees shall develop planning details associated with being a Borrower or Lender under the terms of this Omnibus Agreement.

Lender personnel providing Emergency Assistance shall be under the control of their regular leaders, but the organizational units will come under the operational control of the emergency management authorities of the Borrower. Lender shall not be liable for cessation or slowdown of work if Lender's employees decline or are reluctant to perform any assigned tasks if said employees judge such task to be unsafe. A request for loaned personnel 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 personnel are loaned, the lender may make stipulations on the scope and duties of supervisory personnel loaned.

Any valid licenses issued to Lender personnel by Lender, relating to the skills required for the emergency work, may be recognized by the Borrower during the period of emergency and for purposes related to the emergency. When notified to return personnel to a Lender, the Borrower shall make every effort to return the personnel to the Lender immediately after notification.

#### Article XIII – RECORD KEEPING

Time sheets and/or daily logs showing hours worked and equipment 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 personnel are loaned, the

Lender will provide shipping records for materials and equipment, and the Borrower is responsible for any required documentation of use of material 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 section B., to the fullest extent permitted by applicable law, the Borrower releases and shall indemnify, hold harmless and defend each Lender, 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 Participants 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, by mutual negotiation, hereby waives, as respects any indemnity only, any immunity that would otherwise be available against such claims under Workers' Compensation coverage requirements of ORS Chapter 656.**

- B. ACTIVITIES IN BAD FAITH OR BEYOND SCOPE. Any Participant shall not be required under this Omnibus Agreement to indemnify, hold harmless and defend any other Participant from any claim, loss, harm, liability, damage, cost or expense caused by or resulting from the activities of any Participant's officers, employees, or agents acting in bad faith or performing activities beyond the scope of their duties.
- C. LIABILITY FOR PARTICIPATION. In the event of any liability, claim, demand, action or proceeding, of whatever kind or nature arising out of 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 other proceeding, is the execution and approval of this Omnibus Agreement.
- D. DELAY/FAILURE TO RESPOND. No Participant shall be liable to another Participant 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. LITIGATION PROCEDURES. Each Participant 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 Borrower, which consent shall not be unreasonably withheld. Such Participant shall have the right to participate in the defense of said claim to the extent of its own interest.

Participant's personnel shall cooperate and participate in legal proceedings if so requested by the Borrower, and/or required by a court of competent jurisdiction.

#### Article XVI – WORKERS COMPENSATION AND EMPLOYEE CLAIMS

Lender's employees or officers, made available to Borrower, shall remain the general employees of Lender while engaged in carrying out duties, functions or activities pursuant to this Omnibus Agreement, and each Participant shall remain fully responsible as 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 own employees. Likewise, each Participant shall provide worker's compensation in compliance with statutory requirements of the State of Oregon.

#### Article XVII – MODIFICATIONS

No provisions of this Omnibus Agreement may be modified, altered, or rescinded by any Participant without 2/3 concurrence of the Participants. Modifications to this Omnibus Agreement must be in writing and will become effective upon approval of the modification by a 2/3 affirmative vote of the Participants. Modifications must be signed by an authorized representative of each Participant.

#### Article XVIII – NON EXCLUSIVENESS AND PRIOR AGREEMENTS

This Omnibus Agreement is not intended to be exclusive among the Participants. Any Participant may enter into separate Emergency Assistance with any other entity. No such separate agreement shall terminate any responsibility under the Omnibus Agreement. To the extent that prior agreements between Participants are inconsistent with this Agreement, prior agreements for Emergency Assistance between the Participants hereto will supersede this Omnibus Agreement, until the inconsistencies of the prior agreements are reconciled by the Participants.

#### Article XIX – GOVERNMENTAL AUTHORITY

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

#### Article XX – NO DEDICATION OF FACILITIES

No undertaking by a Participant to another Participant under any provision of this Omnibus Agreement shall constitute a dedication of the facilities or assets of such Participant, or any

portion thereof, to the public or to the other Participant. Nothing in this Omnibus Agreement shall be construed to give a Participant any right of ownership, possession, use or control of the facilities or assets of the other Participant.

#### Article XXI – NO PARTNERSHIP

This Omnibus Agreement shall not be interpreted or construed to create an association, joint venture or partnership among the Participants or to impose any partnership obligation or liability upon any Participant. Further, no Participant shall have any undertaking for or on behalf of, or to act or be an agent or representative of, or to otherwise bind any other Participant.

#### Article XXII – 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 Agreement shall not confer any right or remedy upon any person other than the Participants. This Omnibus Agreement shall not release or discharge any obligation or liability of any third party to any Participant.

#### Article XXIII – ENTIRE AGREEMENT

This Agreement constitutes the entire agreement, though prior agreements of the Participants may take precedence over certain concepts outlined in this Agreement.

#### Article XXIV – SUCCESSORS AND ASSIGNS

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

#### Article XXV – GOVERNING LAW

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

#### Article XXVI – VENUE

Venue of any action which may rise out of this Omnibus Agreement shall be in Clackamas County, Oregon.

#### Article XXVII – TORT CLAIMS

It is not the intention of this Omnibus Agreement to remove from any of the Participants any protection provided by any applicable Tort Claims Act. However, between Borrower and 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 XXVIII – WAIVER OF RIGHTS

Any waiver at any time by any Participant 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 XXIX – INVALID PROVISION

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

#### Article XXX – 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 and confirmed by telephone, or (iii) sent by United States Mail, postage prepaid, to the Director, Emergency Management and the Contact Person for all Participants at the address designated in the each Participant's Emergency Contact Information Form.

#### Article XXXI – Counterparts

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

SIGNATURE PAGE

IN WITNESS WHEREOF, (County/City/Special District) hereto has caused this Omnibus Agreement for Emergency Assistance to be executed by duly authorized representatives as of the date of their signatures.