



Daniel Nibouar
Interim Director

Disaster Management
1710 Red Soils Ct., Ste. 225
Oregon City, OR 97045

T 503-655-8378

clackamas.us

February 16, 2023

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

Approval of an Intergovernmental Agreement with cities within Clackamas County for the lending of personnel within Clackamas County when personnel are unable to get to their normal reporting location. No fiscal impact. No County General Funds are involved.

Previous Board Action/Review	Board approved similar agreement with the Clackamas County Fire Defense Board on June 28, 20218.		
Performance Clackamas	1. This item will provide a mechanism for sharing personnel during times of disaster, when workers may be stranded due to infrastructure failure. This enables use of personnel for continuity of emergency operations to ensure safe, healthy, and secure communities.		
Counsel Review	Yes – 2/8/23 AN	Procurement Review	No
Contact Person	Jamie Poole	Contact Phone	503-278-9150

EXECUTIVE SUMMARY: This agreement was developed by Clackamas County Disaster Management and the Clackamas County Cities’ Emergency Managers group. The agreement mirrored the Fire Defense Board agreement executed in June, 2018. The agreement is limited to the lending and borrowing of county and city personnel and would be utilized during a large disaster where transportation routes are impacted. Stranded workers from cities signatory to the agreement may report to the Clackamas County Emergency Operations Center (EOC) to assist with the coordination of the disaster. The County may allow or deny the assistance. The first 12 hours are covered by the lending city. Any additional hours must be covered by Clackamas County.

RECOMMENDATION: Staff recommends the Board approve the IGA.

Respectfully submitted,

Daniel Nibouar
Interim Director

For Filing Use Only

**INTERGOVERNMENTAL AGREEMENT
FOR
THE LENDING OF PERSONNEL WITHIN CLACKAMAS COUNTY WHEN
PERSONNEL ARE UNABLE TO GET TO THEIR NORMAL REPORTING LOCATION**

This Intergovernmental Agreement (“Agreement”) is entered into, pursuant to Oregon Revised Statutes (ORS) 190.010 to 190.030 , by and among Clackamas County and those cities, and special districts within Clackamas County who have signed this Agreement (herein collectively known as “Parties”).

RECITALS

WHEREAS, the Pacific Northwest is prone to natural hazards such as earthquakes, floods, wind, snow, and ice storms; and

WHEREAS, those hazards, when they occur, may cause a loss of power and communications, significantly damage or affect transportation routes, and leave Party agency Personnel stranded and unable to report to their normal work locations; and

WHEREAS, the Parties have an interest in strengthening and coordinating disaster preparedness, response, and recovery capabilities and enhance its disaster resilience throughout Clackamas County; and

WHEREAS, the Parties’ Personnel (defined below), when stranded by hazard impacts, may be available to assist with emergency management activities in another agency EOC; and

WHEREAS, ORS 190.010 to 190.030 authorize units of local government in Oregon to enter into written agreements with any other unit or units of local government for the performance of any of all functions and activities that any of them has the authority to provide.

NOW, THEREFORE, the Parties agree as follows:

TERMS AND CONDITIONS

I. PURPOSE OF THIS AGREEMENT

The purpose of this Agreement is to authorize, facilitate and establish conditions and provisions for sharing Personnel amongst the Parties during emergencies when transportation routes are disrupted and Personnel are unable to report to their normal work locations. Other Personnel otherwise covered by a separate lending IGA or mutual aid agreement are excluded from this Agreement.

II. DEFINITIONS

- A. Borrower/Borrowing Agency means a Party agency that accepts Emergency Assistance in the form of Personnel from another Party agency, pursuant to the terms of this Agreement.
- B. Emergency includes, but is not limited to, a human-caused or natural event or other circumstance, such as an earthquake, flood, wind, snow, wildfire, or ice storm, which prevents Personnel from reporting to their normal work locations.
- C. Emergency Assistance means Personnel assistance offered during an Emergency and accepted by a Borrowing Agency to assist in the response, relief and/or recovery efforts.
- D. Emergency Operations Center (EOC) is the physical location at which the coordination of information and resources to support incident management (on-scene operations) activities normally takes place. In the context of this Agreement, an EOC includes support and coordination facilities such as emergency coordination centers (ECCs), department operations centers (DOCs), and fire operations centers (FOCs).
- E. Emergency Program Manager means the person appointed by a Party agency who is responsible for the organization, administration and operation of the emergency management agency within its jurisdiction.
- F. Personnel may be full-time, part-time, or other qualified employees from the Party agency.
- G. Lender/Lending Agency means a Party agency that provides Emergency Assistance in the form of Personnel to another Party agency, pursuant to the terms of this Agreement.
- H. National Incident Management System (NIMS) is a systematic, proactive approach to guide departments and agencies at all levels of government, nongovernmental organizations, and the private sector to work together seamlessly and manage incidents involving all threats and hazards – regardless of cause, size, location, or complexity – in order to reduce loss of life, property, and harm to the environment.

III. ADMINISTRATION

Clackamas County Disaster Management will serve as the administrator of this Agreement. The administrator will maintain copies of all signed Agreements and organize meetings of the Party Emergency Program Managers to implement tasks related to the administration and implementation of this Agreement, as outlined in Section V.B.i.

IV. PARTICIPATION IN THIS AGREEMENT

- A. Participation in this Agreement is voluntary and no Party is obligated under this Agreement to act either as a Borrowing or Lending Agency. Each Party shall decide on a case-by-case basis, in its sole discretion, whether it can, under the circumstances, lend or borrow Personnel. No Party shall be liable to another Party, or be considered to be in breach or default under this Agreement, on account of any refusal to lend or borrow Personnel, or any delay in or failure to perform any discretionary duties in this Agreement, except to make payment as specified in this Agreement.
- B. The county and all cities, inter-local agencies, regional governments, and special districts within Clackamas County are eligible to be a Party to this Agreement.

V. ROLES OF PARTY EMERGENCY PROGRAM MANAGERS

- A. Each Party agrees that its Emergency Program Manager or designee will serve as its representative in any meeting to address administration and implementation of this Agreement.
- B. The Party agency Emergency Program Managers, or designees, together, shall:
 - i. Meet annually or as necessary to review and update this Agreement, develop and maintain procedures for Agreement implementation, and evaluate lessons learned from actual use of this Agreement.
 - ii. Develop planning details associated with being a Borrower or Lender under the terms of this Agreement.
 - iii. Develop and implement a means to maintain and disseminate accurate rosters of Party agency approved Personnel.
- C. Each Party agency Emergency Program Manager, or designee, shall:
 - i. Participate in any meetings convened to address administration and implementation of this Agreement.
 - ii. Develop and maintain procedures necessary to implement this Agreement, including but not limited to, communicating with approved Personnel the nature of this IGA.
 - iii. Develop, maintain, and publish a current roster of approved Personnel. Personnel listed on the roster must meet the definition in Part II.F of this Agreement. The list must be available to Party Emergency Program Managers, through an agreed-upon process.

- iv. Maintain a current master copy of this Agreement, and a copy of all implementing policies, procedures, and other documentation.
- v. Notify all Parties if their agency terminates its participation in this Agreement.

VI. PERSONNEL

- A. Personnel must meet at least the minimum qualification standards established by the Party agency and be willing to offer Emergency Assistance to another Party agency in order to participate in this program.
- B. Personnel are authorized to offer Emergency Assistance to other Party agencies (i.e., Borrowers) when requested to do so by a Borrowing Agency party when an Emergency prevents the Borrowing Agency's Personnel from reporting to their normal work locations. Personnel will make every effort to report to their normal work locations before offering assistance to another Party agency.
- C. When reporting to a Borrowing Agency's EOC or other designated site, Personnel must request an assignment from a person authorized to assign and supervise personnel in that EOC or ask to be directed to a person authorized to assign and supervise personnel in the Borrowing Agency's service area for field operations.
- D. The Borrowing Agency is not required to accept and assign reporting Personnel.
- E. Personnel acting under this Agreement are employees of the Lender who provided the Personnel, and shall remain subject to their respective employers' personnel and operations policies, and will make appropriate efforts to advise their employers of their situation either directly or through the Borrowing Agency.

VII. NO EMPLOYMENT RELATIONSHIP

- A. Personnel of the Lender shall, at all times while performing Emergency Assistance or acting under the authority of this Agreement, continue to be employees of the Lender and shall not be deemed to enter into any employment relationship with the Borrower for any purpose. Wages, hours, and other terms and conditions of employment of the Lender shall remain applicable to its Personnel who perform Emergency Assistance under this Agreement. Each Lender shall be solely responsible for payment of its employees' wages, any required payroll taxes and any benefits or other compensation. Each Lender who provides Personnel is and will remain solely responsible for all employment and human resource functions for the Personnel including, but not limited to, FMLA/OFLA administration, worker's compensation, paid sick leave, EEO

complaints, and similar employment-related or human resource issues and concerns. A Borrower shall not be responsible for paying any wages, benefits, taxes, or other compensation for any Borrowed Personnel under this Agreement. The costs associated with borrowed Personnel are subject to the reimbursement process outlined in Paragraph IX, Payment for Emergency Assistance. No business partnership or joint venture is established or contemplated between the Lender and Borrower Agencies in this Agreement. Borrower and Lender Agencies are merely Parties sharing authority and responsibilities pursuant to ORS 190.

- 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 their respective employing agencies solely by virtue of this Agreement.
- C. Personnel responding under this Agreement shall remain under the administrative control of their respective employers (the Lender), but will be under the temporary supervisor and operational control of the Borrower. Pursuant to Section XII of this Agreement, the Lender shall not be liable for any damages, liabilities, or costs. Personnel may decline to perform any assigned task for any reason, including but not limited to if they judge such task to be unsafe or if they are not qualified to perform the assigned task. A Lender may recall its employees if they are needed to provide support or services within the Lender's jurisdiction. If the Borrower requests Lender's Personnel to supervise or direct activities while offering Emergency Assistance, such request shall not relieve the Borrower of any liability or responsibility under this Agreement and shall not create any Lender liability.
- D. In the event of any dispute between Personnel and the Borrower about the performance of services under this Agreement, Personnel shall be subject to the exclusive direction and control (including personnel actions and discipline) of the Lender.

VIII. DUTIES OF BORROWING AGENCY

- A. The Borrower is responsible for making arrangements, as necessary, to provide for the safety, housing, meals, and transportation to and from job/housing sites for loaned Personnel. The reasonable actual costs associated with such arrangements shall be borne by the Borrowing Agency.
- B. The Borrower is responsible for ensuring Personnel understand the scope of their assigned duties and for training them on the policies of the Borrowing Agency.

- C. Unless otherwise agreed to with the Lender, the Borrower shall release Personnel providing Emergency Assistance as soon as conditions allow the personnel to return to their normal work locations. The Borrower shall notify the Lender when the Lender's Personnel are released.
- D. If Personnel does not meet the needs or is otherwise not satisfactory to the Borrower, the Borrower shall be authorized to decline the assistance of the individual. The Borrower shall provide a written explanation to the Lender upon request or no later than the conclusion of the Emergency.

IX. PAYMENT FOR EMERGENCY ASSISTANCE

The Parties agree to the following terms:

- A. The Lender shall invoice the Borrower for the total costs of providing loaned employees including salary or hourly wages, overtime, and benefits. In addition, the Lender may invoice the Borrower for overhead for all time beyond the first 12 hours. All costs shall be consistent with the Lender's personnel policies and/or collective bargaining agreements as applicable, or other conditions of employment. The Borrower and Lender may make other arrangements for payment if mutually agreed to.
- B. A Borrower shall pay a Lender for all reasonable and actual invoiced and itemized 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.

X. TERMINATION

Any Party may terminate its participation in this Agreement by written notice to the administrator of this agreement and the Emergency Program Managers of the other Parties. Notice of termination becomes effective upon receipt by the other Parties. Any Party terminating its participation remains liable for all obligations incurred during its period of participation, until the obligation is satisfied.

XI. RECORD KEEPING

- A. Time sheets and/or daily logs showing hours worked by Personnel responding under this Agreement will be recorded on a shift-by-shift basis and provided to the Borrower upon request. Under all circumstances, the Borrower remains responsible for ensuring that the amount and quality of all documentation is adequate to enable disaster reimbursement.

- B. All records generated or received by Lender's Personnel while assisting Borrower during an Emergency that relate to the Emergency are considered Borrower's records for public records retention purposes. Once Personnel are no longer assisting Borrower, Personnel will provide Borrower with any and all applicable public records in Personnel's possession to Borrower for retention.

XII. INDEMNIFICATION AND LIMITATION OF LIABILITY

- A. INDEMNIFICATION. Except as provided in Paragraph B below, and at all times subject to the applicable tort claims limitations in the Oregon Constitution and the Oregon Tort Claims Act, the Borrower shall indemnify, hold harmless, and defend each Lender (including its officers, employees, volunteers, and agents) that provides Personnel to the Borrower from and against any and all third party claims, losses, harms, liability, damage, cost, or expense, including costs of defense, judgments, or awards of damages arising out of or based upon Borrower's acts or omissions in performing under this Agreement including, but not limited to, using Lender's Personnel.
- B. ACTIVITIES IN BAD FAITH OR BEYOND SCOPE. Notwithstanding anything to the contrary in this Agreement, no Party shall be required under this Agreement to indemnify, hold harmless and defend any other Party or Personnel from any claim, loss, harm, liability, damage, cost, or expense caused by, related to, or resulting from the activities of any Party's officers, employees, or agents acting in bad faith, performing activities beyond the scope of their employment, or in the case of malfeasance in office or willful or wanton neglect of duty.
- C. LIABILITY FOR PARTICIPATION. In the event of any third-party liability, claim, demand, action or proceeding, or whatever kind or nature, arising from the rendering of Emergency Assistance through this Agreement, the Borrower agrees to indemnify, hold harmless, and defend, to the fullest extent of the law, each signatory to this 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 Agreement.

XIII. WORKERS' COMPENSATION AND EMPLOYEE CLAIMS

- A. All Lender Personnel made available to a Borrower shall remain the general employees of the Lender while engaging in and carrying out duties, functions, or activities pursuant to this Agreement, and each Party shall remain fully responsible as the employer for all taxes, assessments, fees, premiums, wages, withholdings, worker's compensation, and other direct and indirect compensation, benefits, and related obligations with respect to its employees. Likewise, each

Party shall provide worker's compensation in compliance with statutory requirements of the states of Oregon.

XIV. NON-EXCLUSIVENESS AND OTHER AGREEMENTS

- A. This Agreement is not intended to be exclusive among the Parties. Any Party may enter into separate Emergency Assistance agreements with any other entity. No such separate agreement shall terminate any responsibility under this Agreement.
- B. Other agreements for Emergency Assistance between any Parties are unaffected by this 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.

XV. NO PARTNERSHIP

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

XVI. NO THIRD PARTY BENEFICIARY

Nothing in this 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 Parties. This Agreement shall not release or discharge any obligation or liability of any third party to any Party.

XVII. ENTIRE AGREEMENT

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

XVIII. SUCCESSORS AND ASSIGNS

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

XIX. TORT CLAIMS

Notwithstanding anything to the contrary herein, this Agreement does not waive any tort claim protections or limitations provided under the Oregon Tort Claims Act or the Oregon Constitution or remove from any of the Parties any protection provided by applicable tort claims laws.

XX. WAIVER OF RIGHTS

Any waiver at any time by any Party of its rights with respect to a default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not constitute or be deemed a waiver with respect to any subsequent default or other matter arising in connection with this 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.

XXI. ADHERENCE TO LAW

Each Party shall comply with all federal, state, and local laws and ordinances applicable to this Agreement.

XXII. 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.

**IGA FOR THE SHARING OF PERSONNEL WITHIN CLACKAMAS COUNTY WHEN
PERSONNEL ARE UNABLE TO GET TO THEIR NORMAL REPORTING LOCATION
SIGNATURE PAGE**

In Witness Whereof, the Public Entity _____ (Party) has caused this Agreement to be executed by its duly authorized representatives as of the date of their signatures below:

Signature of Officer	Date	Officer's Title
----------------------	------	-----------------

Signature of Counsel	Date	Counsel's Title
----------------------	------	-----------------

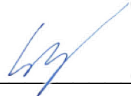
Name and title of primary Contact Representative:	
Address:	
Phone:	
Email:	

Name and title of alternate Contact Representative:	
Phone:	
Email:	

1. E-mail the signed **IGA Signature Page** (this page) to:
 Jamie Poole
 Clackamas County Disaster Management
 1710 Red Soils Court Suite 225, Oregon City, OR 97045
 E-mail: jpoole@clackamas.us
 Telephone: 503-278-9150
2. Retain original signed **IGA Signature Page** for your records.

**IGA FOR THE SHARING OF PERSONNEL WITHIN CLACKAMAS COUNTY WHEN
PERSONNEL ARE UNABLE TO GET TO THEIR NORMAL REPORTING LOCATION
SIGNATURE PAGE**

In Witness Whereof, the Public Entity Clackamas County (Party) has caused this Agreement to be executed by its duly authorized representatives as of the date of their signatures below:

Signature of Officer	Date	Officer's Title
	02/08/2023	Assistant County Counsel
Signature of Counsel	Date	Counsel's Title

<p>Name and title of primary Contact Representative: Daniel Nibouar</p> <p>Address: 1710 Red Soils Court, Oregon City, OR 97045</p> <p>Phone: 503-650-3381 Email: Dnibouar@clackamas.us</p>
--

<p>Name and title of alternate Contact Representative: Jamie Poole</p> <p>Phone: 503-655-8838 Email: Jpoole@clackamas.us</p>

- E-mail the signed **IGA Signature Page** (this page) to:
 Jamie Poole
 Clackamas County Disaster Management
 1710 Red Soils Court Suite 225, Oregon City, OR 97045
 E-mail: jpoole@clackamas.us
 Telephone: 503-278-9150
- Retain original signed **IGA Signature Page** for your records.