**Region 3 Mutual Aid Agreement**
***Omnibus Agreement***

This OMNIBUS AGREEMENT is made and entered into by the undersigned counties, cities, tribes, political subdivisions, and state institutions of higher education located in or contiguous with the Washington State Homeland Security Region 3 counties of Grays Harbor, Lewis, Mason, Pacific, and Thurston – hereafter referred to as "Members" - to enable them to provide assistance to each other as requested.

**WHEREAS**, the Members have expressed a mutual interest in the establishment of an Omnibus Agreement to facilitate and encourage assistance among Members to this agreement; and

**WHEREAS**, in the event of an emergency, a Member to this Omnibus Agreement may need assistance in the form of supplemental personnel, equipment, materials or other support; and

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

**WHEREAS**, the proximity of the Members to each other enables them to provide expedited assistance to each other.

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

## Article 1 - APPLICABILITY

This Omnibus Agreement is available for execution to all counties, cities, tribes, other political subdivisions, and state institutions of higher education located within, or contiguous with, the counties mentioned above. Execution of this Omnibus Agreement shall occur when the Member signs an identical version of this Omnibus Agreement.

## Article 2 - DEFINITIONS

A. Asset means anything that has value to the organization. Assets are defined, but not limited to, any function or department, including, but not limited to Law Enforcement, Fire Service, Public Works, Health Services, Social Services, Building Officials, Engineers, Information Services, Adult Detention, and Craft or Tradesmen.

B. Assistance means employees, services, equipment, materials, or supplies offered during incidents, emergencies or disasters by the Lender and accepted by the Borrower to assist in maintaining or restoring normal services when such service has been disrupted by acts of the elements, equipment malfunctions, accidents, terrorism/sabotage and other occurrences where assistance from other Members is necessary or advisable, as

mutually determined by the lending Member and requesting Member. Assistance may also be offered to support training, drills and exercises.

C. Assistance Costs means any expenses that extend beyond the first eight (8) hours (usual and customary costs) incurred by the Lender in providing any asset requested. After eight (8) hours, the borrower incurs all costs associated with the borrowed asset(s). For this Agreement, the computation of time begins when the lending agency agrees to provide resources by mobilizing the same. Further agreements regarding costs are addressed herein in Article 11, "Payment for Services and Assistance".

D. Borrower means a member county, city, tribe, other political subdivision, or state institution of higher education that 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.

E. Contact Person(s) means the person or persons designated by each Member to request Emergency Assistance from or grant Emergency Assistance to another Member pursuant to the terms of this Omnibus Agreement.

F. Counterparts: This Agreement may be executed in counterparts and by facsimile signature with the same force and effect as if all original signatures were set forth in a single document. The Regional Lead Coordinating Agency shall maintain an original and/or a copy of each signature sheet for each participant.

G. Designated representative shall be identified and designated by each Member to serve as the representative of their respective Member in any meeting to work out the language or implementation issues of this Omnibus Agreement.

H. Emergency includes, but is not limited to, any human-caused or natural event or circumstance within the area of operation of any participating Member 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, act of terrorism or sabotage; said event being or is likely to be beyond the capacity of any affected Member or Members, in terms of personnel, equipment and facilities, thereby requiring assistance.

I. Emergency Contact Information Form is the form to be submitted to the Regional Lead Coordinating Agency and Designated Representative by each Member listing names, addresses, and 24 hour phone numbers of the Contact Person(s) of each Member. Alternatively, the phone number of a dispatch office staffed 24 hours a day that is capable of contacting the Contact Person(s) is acceptable.

J. Event refers to an incident, emergency, disaster, training, drill or exercise which causes a Borrower to request assistance from a Lender under this Omnibus Agreement.

K. Execution means an action, whereupon the occurrence of which comes after a Member has followed an approved legal process.

L. Institution of higher education means a state university, regional university, The Evergreen State College, community college, or technical college authorized under Title 28B RCW of the State of Washington, Higher Education.

M. Lender means a Member who has subscribed to this Omnibus Agreement and has agreed to deliver assistance to another Member pursuant to the terms and conditions of this Omnibus Agreement.

N. Omnibus Agreement means identical agreements executed in counterparts, which bind the executing Member to its terms and conditions to provide and receive assistance. The terms and conditions of the Omnibus Agreements are all identical and the execution of an Omnibus Agreement by a Member binds that Member to all other Members who have executed an identical Omnibus Agreement in counterparts. To be effective for purposes of receiving assistance, this Omnibus Agreement must be fully executed and received by the Subscribing Member's Designated Representative.

O. Member as a term used in this Agreement refers to any function, agency, department, county or city government and their departments and agencies, tribes, other political subdivisions, and state institutions of higher education, including, but not limited to, Law Enforcement, Fire Service, Public Works, Health Services, Social Services, Building Officials, Engineers, Information Services, Adult Detention, and Craft or Tradesmen.

P. Political Subdivision includes, but is not limited to, any county, city or town, tribe, fire district, port, public utility district, or school district.

Q. Repository Agency is the Regional Lead Coordinating Agency, or Thurston County, in the absence of a regional organization. This agency shall maintain records, lists, etc. relative to this Omnibus Agreement.

R. Termination Date is the date upon which this Agreement terminates pursuant to Article 29, herein.

## Article 3 - PARTICIPATION

Participation in this Omnibus Agreement is purely voluntary. Execution of this Agreement is therefore not legally binding on a Member until the Member agrees to become a lender or borrower in accordance with its terms. Once this Omnibus Agreement is executed, Members are obliged to disclose the qualification(s) and training level of personnel identified to provide assistance.

No Member shall be liable to another Member for, 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 if applicable, as specified in Article 11 of this Omnibus Agreement. However, Members who execute the Omnibus Agreement are encouraged to:

A. Ensure that other Members have their organization's most current Emergency Contact Information, and possess a good understanding about how to request assistance under this Agreement.

B. Participate in scheduled meetings, coordinate training, as well as plan for operations and implementation issues to the extent possible.

C. Operate under the principles of the National Incident Management System (NIMS) and the Incident Command System (ICS).

**Article 4 - ROLE OF DESIGNATED REPRESENTATIVE OF MEMBERS**

Members agree to identify a Designated Representative who shall serve on behalf of their respective Member to clarify language or implementation issues of this Omnibus Agreement.

The Designated Representative of each Member shall:

A. Participate in any meetings convened on the implementation of this Omnibus Agreement.

B. Obtain and communicate to relevant Member departments the discussion items and decisions of the meeting, as they bear on interoperability among Members.

C. Maintain a copy of this Omnibus Agreement (including amendments) and a list of the Members. The Designated Representative of the Regional Lead Coordinating Agency shall maintain a master copy of the agreement and accompanying original Member signature pages.

D. The Designated Representative of the Regional Lead Coordinating Agency shall ensure that each Member has a copy of the signature page of newly executed Omnibus Agreement(s).

E. The Designated Representative of the Regional Lead Coordinating Agency shall provide each Member with copies of the Emergency Contact Information Forms provided by the other Members. The Designated Representative of each Member shall ensure that the Regional Lead Coordinating Agency has current Emergency Contact Information for their respective Member.

F. The Designated Representative of each Member shall notify the Lead Coordinating Agency in writing upon their Member's termination of participation in this Omnibus Agreement. In turn, the Designated Representative of the Regional Lead Coordinating Agency shall notify all Members whenever a Member terminates its participation in this Omnibus Agreement.

G. Maintain and distribute checklists to assist Members in the planning details associated with being a Borrower or Lender under the terms of this Omnibus Agreement.

## Article 5 - REQUESTS FOR ASSISTANCE

A Member may request assistance of other participating Members in preventing, mitigating, responding to and recovering from incidents, emergencies, disasters, or in concert with drills or exercises. Requests for assistance shall be directed to the designated contact person(s) on the contact list provided by the Members. Verbal requests shall be followed up with a written request as soon as practical or within thirty (30) days. The extent to which the Lender provides any 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 6 - GENERAL NATURE OF ASSISTANCE

Assistance shall 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 Member. A Member shall not be held liable to any other Member for failing to provide assistance. A Member has the absolute discretion to decline to provide any requested assistance and to withdraw resources it has provided at any time without incurring any liability. Resources are "borrowed", with reimbursement (if applicable) and terms of exchange varying with the type of resource as defined in Articles 7 and 8. The Members hereto recognize that time is critical during an emergency and diligent efforts shall be made to respond to a request for resources as rapidly as possible, including any notification(s) that requested resources are not available. A subscribing Member maintains the option of submitting a request for assistance directly to the State or Federal government or through any other mutual aid agreement or compact the Member agency is party to.

## Article 7 - LOANS OF EQUIPMENT

At the sole discretion of the Lender, equipment may be made available upon request of a Member. Equipment and tool loans are subject to the following conditions:

A. Assets and equipment of a Lender shall continue under the command and control of the Lender, but shall be under the operational control of the appropriate officials within the incident management system of the Borrower.

B. At the option of the Lender, loaned equipment may be loaned with an operator. See Article 8 for terms and conditions applicable to use of borrowed personnel.

C. 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.

D. Borrower shall, at its own expense, provide consumable supplies needed to operate equipment unless mutually agreed upon otherwise. The Borrower shall take proper precaution in its operation, storage and maintenance of Lender's equipment. Members are responsible to ensure that Equipment shall be used only by properly trained and supervised operators. 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.

E. Lender's cost related to the transportation, handling, and loading/unloading of equipment shall be borne by the Borrower unless mutually agreed upon otherwise. 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.

F. Without prejudice to a Lender's right to indemnification under Article 12, in the event loaned equipment is lost or damaged while being dispatched to Borrower, or while in the custody and use of the Borrower, or while being returned 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 that 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 Members to this Omnibus Agreement who may be responsible in whole or in part for damage to the equipment. No Member shall be liable for damage caused by the sole negligence of another Member's operator(s).

**Article 8 - LOANS OF PERSONNEL**

Any Lender personnel providing assistance to Borrower shall remain under the command and control of the Lender, to include medical protocols, standard operating procedures and other protocols. The organizational units shall be under the operational control of the appropriate authorities within the incident management system 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 Borrower's response operation. When supervisory personnel are loaned, the lender may make stipulations on the scope and duties of supervisory personnel loaned.

Any valid licenses, certifications, or other permits issued to Lender personnel by Lender or Lender's state, evidencing qualification in a professional, mechanical or other skill, may be recognized by the Borrower during the term of the event and for purposes related to the event. When notified to return personnel to a Lender, the Borrower shall make every effort to return the personnel to the Lender immediately after notification.

The Lender must ensure that loaned personnel have the ability, skill, and certification necessary to perform the work required and may be obliged to disclose the qualification(s) and training level of personnel identified to provide assistance.

The Members' Designated Representative shall develop planning details associated with being a Borrower or Lender under the terms of this Omnibus Agreement.

**Article 9 - RECORD KEEPING**

Time sheets and/or daily logs showing hours worked and equipment and materials used or provided by the Lender shall be recorded on a shift-by-shift basis by the Lender and/or the loaned employee(s) and shall be provided to the Borrower as needed. If no personnel are loaned, the Lender shall 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 10 - INDEPENDENT CONTRACTOR**

Lender shall be and operate as an independent contractor of Borrower in the performance of any assistance. Employees of Lender shall, at all times while providing 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 provide 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 the reimbursement process outlined in Article 11. 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.

**Article 11 - PAYMENT FOR SERVICES AND ASSISTANCE**

When a request for assistance is made, the Lender and Borrower will determine if reimbursement for services will be requested. Optimally, payment terms and conditions will be negotiated and agreed on at the time of the initial request, but if more time is necessary, any payment terms must be agreed upon within thirty (30) days of the request. In many cases, the Lender and Borrower will agree no reimbursement is necessary.

When reimbursement has been negotiated, the Borrower shall pay the Lender for all valid and invoiced Assistance Costs within sixty (60) days of receipt of the Lender's invoice. If this presents a hardship, the Borrower can make a request to the Lender to revise the payment timeframe. In the event 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.

Verbal requests shall be followed up with a written request as soon as practical or within thirty (30) days.

**Article 12 - 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 assistance to the Borrower, whether arising before, during or after performance of the assistance and whether suffered by any of the Members or any other 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 the Industrial Insurance provisions of Title 51 RCW of the State of Washington.

B. ACTIVITIES IN BAD FAITH OR BEYOND SCOPE. Any Member shall not be required under this Omnibus Agreement to indemnify, hold harmless and defend any other Member from any claim, loss, harm, liability, damage, cost or expense caused by or resulting from the activities of any Member's officers, employees, or agents acting in bad faith or performing activities beyond the scope of their training or 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 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 Member shall be liable to another Member for, 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.

E. DISPUTE RESOLUTION PROCEDURES. Each Member 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 the prior consent of Borrower, which consent shall not be unreasonably withheld. Such Member shall have the right to participate in the defense of said claim to the extent of its own interest. Member'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 13 - SUBROGATION

A. BORROWER'S WAIVER. Borrower expressly waives any rights of subrogation against the Lender, which it may have on account of, or in connection with, the Lender providing assistance to the Borrower under this Omnibus Agreement.

B. LENDER'S RESERVATION AND WAIVER. Lender expressly reserves its right to subrogation against the Borrower to the extent the Lender incurs any self-insured, self-insured retention or deductible loss. The Lender expressly waives its rights to subrogation for all insured losses only to the extent the Lender's insurance policies permit such waiver.

## Article 14 - WORKER'S COMPENSATION AND EMPLOYEE CLAIMS

Lender's employees, officers or agents, made available to Borrower, shall remain the general employee of Lender while engaged in carrying out duties, functions or activities pursuant to this Omnibus Agreement, and each Member 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 Member shall provide worker's compensation in compliance with statutory requirements of the State of Washington.

## Article 15 - 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 events covered by this Omnibus Agreement. A Member and its employees providing assistance under this Agreement shall be entitled to all privileges and immunities from liability as are authorized by the Washington Emergency Management Act, Chapter 38.52 RCW and Federal law.

## Article 16 - NO DEDICATION OF FACILITIES

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

## Article 17 - NO PARTNERSHIP

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

## Article 18 - NO THIRD MEMBER 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 with reference to any third party. This Agreement shall not confer any right, or remedy upon any person other than the Members. This Omnibus Agreement shall not release or discharge any obligation or liability of any third party to any Member.

## Article 19 - ENTIRE AGREEMENT

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

## Article 20 - SUCCESSORS AND ASSIGNS

This Omnibus Agreement is not transferable or assignable, in whole or in part, and any Member may terminate its participation in this Omnibus Agreement subject to Article 29.

## Article 21 - GOVERNING LAW

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

## Article 22 - VENUE

Any action which may arise out of this Omnibus Agreement shall be brought in the courts of the State of Washington.

## Article 23 - TORT CLAIMS

It is not the intention of this Omnibus Agreement to remove from any of the Members 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 24 - WAIVER OF RIGHTS

Any waiver at any time by any Member 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 25 - SEVERABILITY

Should a court of competent jurisdiction rule any portion, section or subsection of this Omnibus Agreement invalid or nullified, that fact shall not affect or invalidate any other portion, section or subsection; and all remaining portions, sections or subsections shall remain in full force and effect.

## Article 26 - NON EXCLUSIVENESS AND ADDITIONAL AGREEMENTS

This Omnibus Agreement is not intended to be exclusive among the Members. Any Member may enter into separate assistance agreements with any other entity. No such separate agreement shall terminate any responsibility under the Omnibus Agreement. To the extent that prior agreements between Members are inconsistent with this Agreement, prior agreements for assistance between the counties, cities, tribes, other political subdivisions, or state institutions of higher education hereto shall supersede this Omnibus Agreement, until and unless any inconsistencies of the prior agreements are reconciled by the Members.

## Article 27 - MODIFICATIONS

No provision of this Omnibus Agreement may be modified, altered, or rescinded by any individual Member without 2/3 affirmative concurrence of the Members to this Agreement. Modifications to this Omnibus Agreement must be in writing, must be approved by a 2/3 affirmative vote of the Members, and must be signed by the Designated Representative of each Member.

## Article 28 - 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 Designated Representative or equivalent for all Members at the address designated in the organization's Emergency Contact Information Form.

## Article 29 - TERM AND TERMINATION

A. This Omnibus Agreement is effective upon execution by two or more Members commencing January 16, 2013, and shall remain in effect until December 31, 2017. Thereafter, unless otherwise agreed upon, the agreement may be extended in five (5) year increments upon concurrence of the signatory Members.

B. A Member opting to terminate this Omnibus Agreement shall provide written termination notification to the Regional Lead Coordinating Agency for all Members. Notice of termination becomes effective upon receipt by the Regional Lead Coordinating Agency. Any terminating Member shall remain liable for all obligations incurred during its period of participation, until the obligation is satisfied.

## SIGNATURE PAGE

**IN WITNESS WHEREOF,** the Member hereto has caused this Omnibus Agreement for Emergency Assistance to be executed by duly authorized representatives as of the date of their signatures.

ADOPTED: _____
(Date)

AGENCY NAME:

_____

ATTEST:

_____

By: (Title) _____

_____
Signature

_____
Title

APPROVED AS TO FORM:

_____

By: (Title) _____

_____
Signature

_____
Title

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Signature

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Title