

**RESOLUTION 12-59 Approval of Intergovernmental Agreement
Mutual Omnibus Agreement – Emergency Assistance**

Background: The "School Emergency Response and Recovery Alliance", better known as "SERRA", is a consortium of representatives from Multnomah ESD, its Component Districts, Mt. Hood Community College, the City of Gresham and Multnomah County.

SERRA was formed in 1997 to explore ways to work together to improve emergency response and recovery capability in the area's schools. SERRA's goals include the periodic approval of an inter-agency Omnibus Agreement which enables planning for emergencies, provides mutual aid in the event of an emergency, and facilitates insurance and FEMA claims after emergencies.

The present Omnibus Agreement is a renewal of the agreement that has been in place for the last five years. SERRA has deemed it important to renew the agreement at this time, to ensure that, due to significant administrative turnover in all SERRA's member agencies over the last few years, the parties continue to be aware of and continue to uphold this agreement which is vital to the safety of students throughout Multnomah County.

The Superintendent recommends approval of this resolution:

WHEREAS, the School Emergency Response and Recovery Alliance was developed to improve emergency response and recovery capability in the area's schools; and

WHEREAS, the Multnomah Education Service District Board of Directors recognizes the need for a coordinated effort by all school districts and governmental agencies within the county in the event of an emergency; and

WHEREAS, the component districts have taken Board action to renew the agreement for the 2012-2013 school year.

NOW THEREFORE BE IT RESOLVED, that the Multnomah Education Service District Board of Directors approves the renewal of participation in the Intergovernmental Agency Mutual Omnibus Agreement for Emergency Assistance.

INTERGOVERNMENTAL AGREEMENT
Mutual Aid Omnibus Agreement
Emergency Assistance

This **OMNIBUS AGREEMENT** is made and entered into by the undersigned Districts (hereafter referred to as “Participating Districts”) to enable them to provide Emergency assistance to each other during times of emergency.

WHEREAS, the Participating Districts have expressed mutual interest in the establishment of an Omnibus Agreement to facilitate and encourage mutual aid and assistance among the Participating Districts; and

WHEREAS, in the event of an emergency a Participating District which has executed this Omnibus Agreement may need emergency assistance in the form of supplemental personnel, equipment, materials or other support; and

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

WHEREAS, the proximity of the Participating Districts to each other enables them to provide emergency assistance to each other.

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

ARTICLE I – APPLICABILITY

This Omnibus Agreement is available for execution to all Participating Districts. Execution of the Omnibus Agreement by a Participating District will occur when the Participating District 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 which 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 personnel more than eight (8) hours, at which time the labor costs will be incurred by the borrowing Participating District. For this Omnibus Agreement, the time begins when the lending agency makes personnel available. Further agreements regarding costs appear in Article XII, Loans of Personnel.

- B. "Borrower" means a Participating District which 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. "Contact Person(s)" means the person or persons designated by each Participating District to request emergency assistance from or grant emergency assistance to another Participating District pursuant to the terms of this Omnibus Agreement.
- D. "Participating District" means an entire school district or entire education service district. Though the point of contact for this agreement is the Director of Emergency Management, all functions or departments of Participating Districts are implicated in this Omnibus Agreement, as emergency assistance could be provided by any function or department including, but not limited to instruction services, special education services, health services, social services, business services, transportation, information services, and craft or tradesmen.
- E. "Director of Emergency Management" means the person appointed as the emergency program manager by the superintendent or governing board of a Participating District.
- F. "Emergency" includes, but is not limited to, a human-caused or natural event or circumstances within the area of operation of any Participating District causing or threatening loss of life, damage to the environment, injury to person or property, human suffering or financial loss, such as: employee strike or work stoppage, 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 Participating District or Participating Districts, in terms of personnel, equipment and facilities, thereby requiring emergency assistance.
- G. "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 Participating District 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 Participating Districts is necessary or advisable, as determined by the requesting Participating District.
- H. "Emergency Contact Information Form" is the form to be submitted to the Directors of Emergency Management by each Participating District that lists names, addresses, and 24 hour contact phone numbers of the Contact Person(s) of each Participating District.

- I. "Lender" means a Participating District which signed and adopted this Omnibus Agreement and has agreed to deliver emergency assistance to another Participating District pursuant to the terms and conditions of this Omnibus Agreement.
- J. "Omnibus Agreement" means identical Participating District agreements executed in counterparts which bind the executing Participating District 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 Participating District binds that Participating District to all other Participating Districts which have executed an identical Omnibus Agreement in counterparts. To be effective for purposes of receiving emergency assistance, this Omnibus Agreement must be fully executed and received by the Subscribing Participating Districts' superintendents.
- K. "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.

ARTICLE IV – ROLES OF DIRECTOR OF EMERGENCY MANAGEMENT OF PARTICIPATING DISTRICTS

Participating Districts agree that individual Directors of Emergency Management or designee can serve as the representative of the Participating District in any meeting to agree on interpretation of the language or implementation of this Omnibus Agreement.

The Director of Emergency Management of each Participating District shall, to the extent reasonably possible:

- A. Participate in any meetings convened which are related to this Omnibus Agreement.
- B. Obtain and communicate to each Participating District the discussion items and decisions of the meeting.
- C. Maintain a manual containing the master copy of this Omnibus Agreement, any Amendments thereto, and a list of Participating Districts.
- D. Notify all Participating Districts whenever a new Participating District executes the Omnibus Agreement.
- E. Provide each Participating District with a copy of the signature page of newly executed Omnibus Agreement(s).

- F. Provide each Participating District with copies of the Emergency Contact Information Forms provided by other Participating Districts.
- G. Notify all Participating Districts whenever a Participating District terminates its participation in this Omnibus Agreement.
- H. Maintain and distribute checklists to assist Participating Districts in the planning details associated with being a Borrower or Lender under the terms of this Omnibus Agreement.

ARTICLE V – TERMS AND TERMINATION

- A. This Omnibus Agreement is effective upon execution by two or more Participating Districts.
- B. A Participating District opting to terminate this Omnibus Agreement shall provide written termination notification to the Director of Emergency Management for each Participating District. Notice of termination becomes effective upon receipt by the Directors of Emergency Management. Any terminating Participating District 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.

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 Participating Districts. 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 Omnibus Agreement shall remain in effect until or unless this Omnibus Agreement conflicts with such federal and state Laws.

ARTICLE IX – GENERAL NATURE OF EMERGENCY ASSISTANCE

Emergency assistance will be in the form of resources, including 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 Participating District. A Participating District shall not be held liable for failing to provide emergency assistance. A Participating District 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 Participating Districts 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 Participating District. The first eight (8) hours of use will be without cost to the Borrower, after which use of equipment, including construction equipment, 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 as selected by the Directors of Emergency Management, 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 twenty-four (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 these charges when provided by outside sources and shall provide hourly accounting of charges for Lender's employees who perform these 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 the 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 damaged 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, loan to Borrower employees who are willing to provide various services. These employees will be loaned 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 each employee's salary or hourly wages, call back or overtime costs, benefits and overhead, and consistent with Lender's collective bargaining or individual 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 Participating Districts' Directors of Emergency Management 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 temporary direction 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 employees judge a 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.

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 any available 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 if available.

ARTICLE XIV – INDEMNIFICATION AND LIMITATION OF LIABILITY

A. NOTIFICATION AND PARTICIPATION. Participating Districts which execute the Omnibus Agreement are expected to:

1. Ensure that each Participating District timely receives the most current emergency contact information.
2. Participate in scheduled meetings to coordinate operational and implementation issues.

B. INDEMNIFICATION. Except as provided in section C., 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 Participating Districts or any person or entity.

- C. ACTIVITIES IN BAD FAITH OR BEYOND SCOPE. Any Participating District shall not be required under this Omnibus Agreement to indemnify, hold harmless and defend any other Participating District from any claim, loss, harm, liability, damage, cost or expense caused by or resulting from the activities of any Participating District's officers, employees, or agents who are acting negligent, in bad faith or performing activities beyond the scope of their duties.
- D. 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.
- E. DELAY/FAILURE TO RESPOND. No Participating District shall be liable to another Participating District for, or be considered in breach of or default under this Omnibus Agreement due to any delay in or failure to perform any obligation under this Omnibus Agreement, except to make payment as specified in this Omnibus Agreement.
- F. PARTICIPATING DISTRICT LITIGATION PROCEDURES. Each Participating District 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. The Participating District shall have the right to participate in the defense of said claim to the extent of its own interest. A Participating District'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, officers or agents, made available to Borrower, shall remain Lender's employees, officers or agents while engaged in carrying out duties, functions or activities pursuant to this Omnibus Agreement, and each Participating District 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 Participating District shall provide Workers' 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 Participating District without 2/3 concurrence of the signatory Participating Districts. 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 signatory Participating Districts. Modifications must be signed by an authorized representative of each Participating District.

ARTICLE XVIII – NON EXCLUSIVENESS AND PRIOR AGREEMENTS

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

ARTICLE XIX – GOVERNMENTAL AUTHORITY

This Omnibus 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 Participating District to another Participating District under any provision of this Omnibus Agreement shall constitute a dedication of the facilities or assets of such Participating District, or any portion thereof, to the public or to the other Participating District. Nothing in this Omnibus Agreement shall be construed to give a Participating District any right of ownership, possession, use or control of the facilities or assets of any other Participating District.

ARTICLE XXI – NO PARTNERSHIP

This Omnibus Agreement shall not be interpreted or construed to create an association, joint venture or partnership among the signatory Participating Districts or to impose any partnership obligation or liability upon any Participating District. Further, no Participating District 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 Participating District.

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 Omnibus Agreement shall not confer any right or remedy upon any person other than the Participating Districts. This Omnibus Agreement shall not release or discharge any obligation or liability of any third party to any Participating District.

ARTICLE XXIII – ENTIRE AGREEMENT

This Omnibus Agreement constitutes the entire agreement, though prior agreements of the Participating Districts 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 Participating District 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

Any action which may rise out of this Omnibus Agreement shall be brought in the county where the emergency occurred.

ARTICLE XXVII – TORT CLAIMS

It is not the intention of this Omnibus Agreement to remove from any of the Participating Districts 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 Participating District 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 Directors of Emergency Management for all Participating Districts at the address designated in each Participating District's Emergency Contact Information Form.

SIGNATURE PAGE:

**MULTNOMAH EDUCATION SERVICE DISTRICT
11611 N.E. Ainsworth Circle
Portland, OR 97220**

IN WITNESS WHEREOF, Multnomah Education Service District, Multnomah County Oregon hereto has caused this Omnibus Agreement for emergency assistance to be executed by its duly authorized representatives as of the date of their signatures.

Dated this ____ day of _____, 2012

By: _____
Barbara Jorgensen, Superintendent

By: _____
Director of Emergency Management

REVIEWED:

By: _____
Attorney

ADOPTED BY THE MULTNOMAH EDUCATION SERVICE DISTRICT BOARD OF DIRECTORS

Resolution Number: 12-56
Date: June 19, 2012
