

KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

July 18, 2000

Motion 10972

Proposed No. 2000-0410.2

Sponsors Pullen

1 A MOTION approving the language proposed by the
2 Executive for a mutual aid agreement with other counties in
3 Washington state for emergency management purposes,
4 under the Interlocal Cooperation Act.

5

6

7 WHEREAS, King County and other counties in Washington state have expressed
8 a cooperative interest in the establishment of an inter-county mutual aid agreement
9 whereby counties may voluntarily assist one another when disasters strike; and

10 WHEREAS, the Interlocal Cooperation Act, chapter 39.34 RCW, provides a
11 useful mechanism for such a purpose,

12 WHEREAS, chapter 38.52 RCW authorizes counties to enter into mutual aid
13 agreements with respect to the carrying out of emergency management functions;

14 NOW, THEREFORE, BE IT MOVED by the Council of King County:

15 The county council authorizes the executive to negotiate contracts based upon
16 language proposed by the executive in the Inter-county Mutual Aid Agreement,
17 Attachment A to this motion. The council directs the executive to pursue similar

Motion 10972

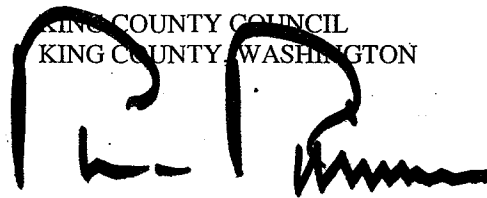
18 agreements with other counties in the state of Washington and will then transmit those
19 agreements to the council for approval by ordinance in accordance with the Interlocal
20 Cooperation Act, RCW 39 chapter 43.
21

Motion 10972 was introduced on 7/10/00 and passed by the Metropolitan King County Council on 7/17/00, by the following vote:

Yes: 9 - Mr. von Reichbauer, Ms. Fimia, Mr. Phillips, Mr. Pelz, Mr. McKenna, Ms. Sullivan, Mr. Nickels, Mr. Pullen and Mr. Vance

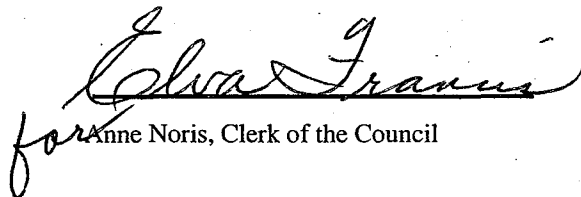
No: 0

Excused: 4 - Ms. Miller, Mr. Gossett, Ms. Hague and Mr. Irons

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Pete von Reichbauer, Chair

ATTEST:


for Anne Noris, Clerk of the Council

Attachments

A. Inter-county Mutual Aid Agreement

Inter-county Mutual Aid Agreement *Omnibus Agreement*

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

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

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

WHEREAS, each Party County may own and maintain equipment, 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 Counties in the event of an emergency; and

WHEREAS, the proximity of the Party Counties 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 County agrees as follows:

Article I - APPLICABILITY.

This Omnibus Agreement is available for execution to all Counties, in Oregon, Washington, and Idaho. Execution of this Omnibus Agreement by a County will occur when the County signs an identical version of this Omnibus Agreement.

Article II - DEFINITIONS.

- A. Assistance Costs means any direct equipment costs and the 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 any asset for more than eight (8) hours, at which time the costs of human and material resources will be incurred by the borrowing county. For this agreement, the time begins when the lending agency agrees to provide resources. Further agreements regarding costs appear in Article XII, Loans of Personnel.
- B. Borrower means a County 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. Contact Person(s) means the person or persons designated by each Party County to request Emergency Assistance from or grant Emergency Assistance to another Party County pursuant to the terms of this Omnibus Agreement.
- D. County means an entire County government. Though the point of contact for this agreement is the Director of Emergency Management, all functions or departments of County Governments are implicated in this Omnibus Agreement, as Emergency Assistance could be provided by any function or department, including, but not limited to Law Enforcement, Public Works, Health Services, Social Services, Building Officials, Engineers, Information Services, Adult Detention, and Craft or Tradesmen.
- E. Emergency includes, but is not limited to, a human-caused or natural event or circumstance within the area of operation of any participating County 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 Party County or Party Counties, 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 county 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 Party Counties is necessary or advisable, as determined by the requesting County.

- G. Emergency Contact Information Form is the form to be submitted to the Directors of Emergency Management by each Party County that lists names, addresses, and 24 hour phone numbers of the Contact Person(s) of each Party County. 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 Party County who has subscribed to this Omnibus Agreement and has agreed to deliver Emergency Assistance to another Party County pursuant to the terms and conditions of this Omnibus Agreement.
- I. Omnibus Agreement means identical agreements executed in counterparts which bind the executing County 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 Party County binds that Party County to all other Party Counties 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 and received by the Subscribing Counties' Directors of Emergency Management.
- 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 Party County shall be liable to another Party County 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. However, Party Counties who execute the Omnibus Agreement are expected to:

- A. Ensure that other Party Counties have their County's 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 Director of Emergency Management of Party Counties

Party Counties agree that individual Directors of Emergency Management or designee can serve as the representative of the Party County in any meeting to work out the language or implementation issues of this Omnibus Agreement.

The Director of Emergency Management of each Party County shall:

- A. Participate in any meetings convened on the implementation of this Omnibus Agreement.
- B. Obtain and communicate to relevant Party County departments the discussion items and decisions of the meeting, as they bear on interoperability among Party Counties.
- C. Maintain a manual containing the master copy of this Omnibus Agreement (as amended) and a list of Party Counties.
- D. Notify all Party Counties whenever a new Party County executes the Omnibus Agreement.
- E. Provide each Party County with a copy of the signature page of newly executed Omnibus Agreement(s).
- F. Provide each Party County with copies of the Emergency Contact Information Forms provided by other Party Counties.
- G. Notify all Party Counties whenever a Party County terminates its participation in this Omnibus Agreement.
- H. Maintain and distribute checklists to assist Party Counties in the planning details associated with being a Borrower or Lender under the terms of this Omnibus Agreement.

Article V - TERM AND TERMINATION.

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

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

Article X - LOANS OF EQUIPMENT.

At the sole discretion of the Lender, equipment may be made available upon request of a Party County. 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 cost, 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 24 hours following notification.

3. Borrower shall, at its own expense, supply all fuel, lubrication and maintenance for loaned equipment. The Borrower will take proper precaution in its operation, storage and maintenance of Lender's equipment. 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.
4. Lender's cost 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 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, 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 operator(s).

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 as are willing to participate available to Borrower. These employees will be provided without cost to the Lender for the first eight (8) hours of service, after which they will be loaned at Borrower's expense equal to Lender's full cost, 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 Party Counties' 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 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 or Lender's state, 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 Party Counties 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 and similar laws of other states.

- B. **ACTIVITIES IN BAD FAITH OR BEYOND SCOPE .** Any Party County shall not be required under this Omnibus Agreement to indemnify, hold harmless and defend any other Party County from any claim, loss, harm, liability, damage, cost or expense caused by or resulting from the activities of any Party County's officers, employees, or agents acting in bad faith or performing activities beyond the scope of 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 Party County shall be liable to another Party County 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. **COUNTY LITIGATION PROCEDURES.** Each Party County seeking to be released, indemnified, held harmless or defended under this Article with respect to any claim shall promptly notify the Borrower of such claim and shall not settle such claim without the prior consent of Borrower, which consent shall not be unreasonably withheld. Such Party County shall have the right to participate in the defense of said claim to the extent of its own interest. Party County'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 XV - 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 Emergency 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, then in force, permit such waiver.

Article XVI - 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 Party County 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 Party County shall provide worker's compensation in compliance with statutory requirements of the state of residency.

Article XVII - MODIFICATIONS.

No provision of this Omnibus Agreement may be modified, altered, or rescinded by any individual Party County without 2/3 affirmative concurrence of the Party Counties. 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 Party Counties. Modifications must be signed by an authorized representative of each Party County.

Article XVIII- NON EXCLUSIVENESS AND PRIOR AGREEMENTS.

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

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, the Counties or either of them.

Article XX - NO DEDICATION OF FACILITIES.

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

Article XXI - NO PARTNERSHIP.

This Omnibus Agreement shall not be interpreted or construed to create an association, joint venture or partnership among the Party Counties or to impose any partnership obligation or liability upon any Party County. Further, no Party County shall 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 Party County.

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 with reference to any third party. This Agreement shall not confer any right, or remedy upon any person other than the Party Counties. This Omnibus Agreement shall not release or discharge any obligation or liability of any third party to any Party County.

Article XXIII - ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement, though prior agreements of the Party Counties may take precedent 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 Party County 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 in which the Lender maintains its principal place of business. For Washington Party Counties, the laws of the State of Washington shall apply. For Oregon Party Counties, the laws of the State of Oregon shall apply. For Party Counties in Idaho, the laws of the State of Idaho shall apply. Where Party Counties are in different states, the laws of the state in which the Emergency occurs shall apply.

Article XXVI - VENUE.

Any action which may arise out of this Omnibus Agreement shall be brought in the state where the Emergency occurred.

Article XXVII - TORT CLAIMS.

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

Article XXIX - INVALID PROVISION.

The invalidity or unenforceability of any provisions hereof, and 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 Party Counties at the address designated in the County's Emergency Contact Information Form.

SIGNATURE PAGE

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

KING COUNTY

Date: _____

Attest:

Approved as to form only:

Deputy Prosecuting Attorney

SNOHOMISH COUNTY

Date: _____

Attest:

Approved as to form:

Deputy Prosecuting Attorney

PIERCE COUNTY

Date: _____

Attest:

Approved as to form:

Deputy Prosecuting Attorney

OTHER COUNTY

Date: _____

Attest:

Approved as to form:

Prosecuting Attorney