**INTERGOVERNMENTAL AGREEMENT No.**

**BETWEEN THE STATE OF OREGON AND** **COUNTY**

**RECITALS**

 This Intergovernmental Agreement (“Agreement”) is between the State of Oregon acting by and through the Office of Emergency Management, (hereinafter “OEM”), and the Sheriff’s Office of       County (hereinafter the “County”). Each party, without distinction, shall be referred to individually as “Party” or collectively as “Parties.”

 WHEREAS: OEM is required, pursuant to ORS 404.105, to establish and maintain a program for the air search and rescue of lost aircraft and persons and for the air support of other emergency situations, and is authorized, pursuant to ORS 404.105(3), to enter into agreements with state and local agencies for air search and rescue and other emergency services; and

 WHEREAS: ORS 837.035 authorizes OEM to use money in the Oregon Aviation Search and Rescue Account for the payment of all expenses incurred by OEM in conducting activities authorized by ORS 404.105 to search for lost planes and lost persons, the rescue of lost persons, pilot survival education and training and all other expenses directly attributable to an air search and rescue program; and

 WHEREAS: Pursuant to ORS 404.110, the      County Sherriff’s Office is responsible for search and rescue activities within       County; and

 WHEREAS: The Parties wish to enter into an agreement for fuel and oil reimbursement paid from OEM to the County for aircraft utilized by the County for authorized Air Search and Rescue (SAR) Activities in the State of Oregon; and

 WHEREAS: ORS 190.110 authorizes a unit of local government or a state agency of this state to cooperate, by agreement or otherwise, with a unit of local government or a state agency of this state in exercising a power conferred upon it or in administering a policy or program delegated to it by law;

 NOW, therefore, the Parties hereby agree:

**AGREEMENT**

# 1. PARTIES

1.1 **OEM** is a state office established pursuant to ORS 401.052.

1.2 **COUNTY** is a subdivision of the state as described in ORS chapter 201, having those powers prescribed by law, including without limitation those in ORS chapter 201, and is a “unit of local government” for purposes of ORS 190.110.

# 2. TERM. This Agreement shall be in effect on the date the Agreement has been signed by all Parties and all approvals required by law have been obtained. This Agreement shall terminate five years from the effective date unless it is terminated earlier pursuant to Section 16, or amended pursuant to Section 15.

**3. DEFINITIONS**

3.1 “Air Search and Rescue Activities” or “Air SAR Activities” means those activities over which OEM has authority pursuant to ORS 404.105 and for which payment from the Aviation Search and Rescue Account is approved pursuant to ORS 837.035.

**4.** **ROLES and RESONSIBILITIES**

4.1 The County shall activate local Air SAR platforms in accordance with ORS 404.110, this Agreement, and all other applicable laws.

4.2. OEM shall reimburse the County for fuel and oil used by local Air SAR assets in accordance with ORS 837.035, ORS 404.105, this Agreement, and all other applicable laws.

**5**. **PROCEDURES FOR REIMBURSEMENT** **Authorization**

5.1 In order to be eligible for fuel and oil reimbursement the County or other person performing duties of the sheriff under ORS 405.110 shall complete the following procedures prior to commencing Air SAR Activities:

a. The County shall provide the Oregon Emergency Response System (“OERS”) with a description of the mission and acquire a mission number from OERS.

b. OERS will notify the SAR Coordinator or their designee of the County’s mission request. The SAR Coordinator will contact the County and the County will provide details of the mission, including a mission description and the OERS mission number.

c. The County shall acquire an authorization number from OEM. The SAR Coordinator or their designee will record the information provided by OERS and issue the County an authorization number for fuel and oil reimbursement.

5.2 If the County fails to follow the proper procedures, including but not limited to failing to acquire authorization from OEM prior to commencing Air SAR Activities, OEM may not be able to provide reimbursement.

**6. ISSUANCE OF REIMBURSEMENT**

6.1 To receive reimbursement, the County shall provide the State SAR Coordinator with the following documentation within one year after the end of the mission using local Air SAR assets:

a. A letter on the County Sheriff Office’s letterhead requesting reimbursement. The letter shall include a specified amount of money, the authorization number and the name and address of the person or agency receiving the money;

b. A receipt for fuel or oil (either an original or a copy) showing the date of purchase, the quantity of fuel or oil purchased, and the cost per gallon of the fuel or oil products; and

c. A completed Search and Rescue Incident Summary Form (currently Version 7) for the mission.

6.2 Upon receipt, OEM will review the supporting documentation and if conditions listed in 6.1 are met, OEM shall forward the documents to the Oregon Department of Aviation, to issue reimbursement to the County.

6.3 If the County fails to meet any of the conditions of this Agreement, including but not limited to the County failing to request reimbursement within one year of ending Air SAR Activities, failing to acquire an authorization number prior to commencing Air SAR Activities, or not providing the required documentation, OEM may not be able to provide reimbursement.

6.4 Reimbursement for fuel or oil may not be possible if there are inadequate funds in the Oregon Aviation Search and Rescue Account.

a. If reimbursement is denied for lack of funds, reimbursement may be considered for payment to the County once sufficient funds become available.

b. If funds in the Aviation Search and Rescue Account are inadequate to reimburse all qualifying requests, OEM shall authorize receipts for fuel and oil by priority of the purchase date on the receipt.

**7. GENERAL TERMS AND CONDITIONS**

 7.1 Nothing in this Agreement can or is meant to supersede Oregon Revised Statutes.

 7.2 Reimbursement will continue so long as there are funds available from the Aviation Search and Rescue Account. Fiscal depletion of the funding source will stop payments until money becomes available.

 7.3 Nothing in this agreement will be construed as an obstruction or delay to prompt and effective Air SAR actions by federal, state, or local SAR officials, or the County Sheriff’s Office, to relieve distress wherever and whenever found.

**8. CONTRIBUTION.** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against the State or County with respect to which the other Parties may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim which is not barred by ORS 837.035 or ORS 404.210, for which State is jointly liable (or would be if joined in the Third Party Claim), the State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the County in such proportion as is appropriate to reflect the relative fault of State in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State’s contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including ORS 837.035(2), ORS 404.210, and the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.

With respect to a Third Party Claim not barred by statute, for which the County is jointly liable with the State (or would be if joined in the Third Party Claim), the County shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of the County on the one hand and of the State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the County on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The County’s contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

**9. ALTERNATIVE DISPUTE RESOLUTION.** The parties will attempt in good faith to resolve any dispute arising out of this Agreement. This may be done at any management level, including higher than persons directly responsible for administration of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

**10. COMPLIANCE WITH APPLICABLE LAW.** The County shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement. Without limiting the generality of the foregoing, the County expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated.

OEM’s performance under the Agreement is conditioned upon the County’s compliance with the relevant provisions of ORS 404.100 through ORS 404.350, which are incorporated by reference herein. The County shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled products (as “recycled product” is defined in ORS 279A.010(1)(ii)).

**11. RECORDS MAINTENANCE, ACCESS.** The County shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, the County shall maintain any other records pertinent to this Agreement in such a manner as to clearly document the County’s performance. The County acknowledges and agrees that OEM, the Oregon Secretary of State and the federal government and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of the County that are pertinent to this Agreement, whether in paper, electronic, or other form, to perform examinations and audits and make excerpts or transcripts. The County shall keep all records relating to this Agreement for a minimum of six years, or such longer period as may be required by applicable law, following termination of this Agreement or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever is later.

**12. ASSIGNMENT.** No assignment, in whole or in part, by any Party shall be valid without the prior written consent of the other Party.

**13. WAIVER, MERGER.** This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter thereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind the Parties unless in writing and signed by all Parties and all necessary state approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of any Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision.

**14. SEVERABILITY.** The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term held to be invalid.

**15. AMENDMENTS.** No amendment to this Agreement shall be effective unless it is in writing signed by all Parties, and all approvals required by applicable law have been obtained.

**16. TERMINATION**. Either Party may terminate this Agreement without notice at any time, including but not limited to:

16.1 If federal or state laws, regulations, or guidelines are modified or interpreted in such a way that OEM cannot lawfully perform its obligations under this Agreement; or

16.2 If OEM fails to receive funding, appropriations, limitations, allotments or other expenditure authority; or

16.3 If the County fails to perform its duties under this Agreement; or

16.4 For the convenience of either Party.

Termination of this Agreement shall not affect the rights of either party that accrue prior to termination. Nothing in this Agreement shall be deemed or construed as a waiver of OEM’s right to deny payment in accordance with section 6.4, when termination occurs pursuant to 16.2 of this Agreement.

**17. DEFAULT and REMEDIES**

**DEFAULT BY COUNTY.** The County shall be in default under this Agreement if the County commits any material breach or default of any covenant, warranty, obligation or agreement under this Agreement, fails to perform its duties under this Agreement within the time specified herein or any extension thereof, or so fails to pursue its duties under this Agreement as to endanger its performance under this Agreement in accordance with this Agreement’s terms. In the event the County is in default of this Agreement, OEM may pursue any of the remedies available to it under this Agreement and at law or in equity, including but not limited to:

17.1 Terminate this agreement under Section 16;

17.2 Withhold or deny all monies due for performance of the County’s duties under this Agreement that the County has failed to deliver within the scheduled completion dates or has performed inadequately, defectively, or not in accordance with the procedures of this Agreement;

17.3 Collect damages OEM suffers caused by the County’s default or breach of performance under this Agreement.

These remedies are cumulative to the extent that the remedies are not inconsistent, and OEM may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

**DEFAULT BY OEM.** OEM shall be in default under this Agreement if OEM denies the County reimbursement of any amount in violation of the terms of this Agreement, and OEM fails to cure such failure within ninety (90) calendar days after the County’s notice to OEM or such longer period as the County may specify in such notice; or OEM commits any material breach or default of any covenant, warranty, or obligation under this Agreement, and such breach, or default is not cured within ninety (90) calendar days after the County’s notice to OEM or such longer period as the County may specify in such notice.

In the event OEM terminates this Agreement under Sections 16 or 17 of this Agreement, or in the event OEM is in default of this Agreement under Section 17 and whether or not the County elects to exercise its right to terminate the Agreement under Section 16, the County’s sole monetary remedy shall be a claim for unpaid reimbursements owed to the County by OEM pursuant to this Agreement. In no event shall OEM be liable to the County for any expenses related to termination of this Agreement or for anticipated reimbursements that do not comply with the terms of this Agreement.

**18. GOVERNING LAW; JURISDICTION; VENUE.** This Agreement will be governed by and construed according to the laws of the State of Oregon without resort to any jurisdiction's conflict of laws rules or doctrines. Any claim, action, suit or proceeding (collectively, "the claim") between OEM (and/or any other Agency or department of the State of Oregon) and the County that arises from or relates to this Agreement will be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment of the Constitution of the United States, or otherwise, from any Claim or from the jurisdiction of any court. THE COUNTY, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

**19. NO THIRD PARTY BENEFICIARIES.** OEM and the County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or will be construed to give or provide, any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

**20. REPRESENTATION; WARRANTIES**

20.1 The County represents and warrants that it will provide the activities in accordance with the terms of this Agreement without regard to race, religion, color, sex, and national origin.

20.2 The County represents and warrants to OEM that (1) the County has the power and authority to enter into and perform this Agreement, (2) this Agreement, when executed and delivered, shall be a valid and binding obligation of the County enforceable in accordance with its terms, (3) the persons signing the Agreement on behalf of the County are authorized to do so and, by doing so, bind their respective Parties; (4) the County has the skill and knowledge possessed by well-informed members of its industry, trade or profession and the County will apply that skill and knowledge with care and diligence to perform its duties under this Agreement in a professional manner and in accordance with standards prevalent in the County’s industry, trade or profession, and (5) the County shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform their duties under this Agreement. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

**21. NOTICE.** Except as otherwise expressly provided in this Agreement, any communications between the Parties or notices to be given hereunder shall be given in writing by personal delivery, facsimile, electronic mail, or mailing the same, postage prepaid to the County or OEM at the address or number set forth below, or to such other addresses or numbers as any Party may indicate pursuant to this Section. Any communication or notice so addressed and mailed shall be effective five (5) days after mailing. Any communication or notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the recipient, or on the next business day, if transmission was outside normal business hours of the recipient. Any communication or notice delivered by electronic mail shall be effective on the day of notification of delivery receipt, if delivery was during normal business hours of the recipient, or on the next business day, if delivery was outside normal business hours of the recipient. Any communication or notice given by personal delivery shall be effective when actually delivered.

 **To OEM**:

 Name: Georges Kleinbaum, State SAR Coordinator

 Email: georges.kleinbaum@state.or.us

 Phone: (503) 378-2911 Ext. 22238

Address: Mailing Address: Physical Address:

 PO Box 14370 3225 State Street

Salem, OR 97309-5062 Salem, OR 97301

**To COUNTY:**

 Name:

 Email:

 Phone:

Address:

The Parties may change the persons named in this Section by notice to the other parties as provided herein. No amendment to this Agreement is required to make such change.

**22. COUNTERPARTS.** This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed shall constitute an original.

**23. SIGNATURES. IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the date and year above-written.

**THE OFFICE OF EMERGENCY MANAGEMENT**

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 By: Date

 Its: Operations and Preparedness Section Manager

**COUNTY SHERIFF’S OFFICE**

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 By: Date

 Its: