

Maryland Mutual Aid and Assistance Agreement for Intrastate Water/Wastewater Agency Response Network (WARN)

AGREEMENT

This Agreement (the "Agreement") is made and entered into by public and private Water and Wastewater Utilities (the "Utilities") operating in Maryland, who, by executing this Agreement join the Maryland Water/Wastewater Agency Response Network ("MDWARN") and bind themselves to participate in Maryland's Intrastate Program for Mutual Aid and Assistance (the "Mutual Aid Program").

ARTICLE I PURPOSE

The Utilities hereby establish the Mutual Aid Program to coordinate response activities and share resources during emergencies, including without limitation providing on a cost basis personnel, equipment, and supplies. This Agreement sets forth the procedures and standards for the administration of the Mutual Aid Program across jurisdictional and county boundaries in the State of Maryland. This Mutual Aid Program is limited to Water and Wastewater Utilities, and in no way affects other mutual aid or other agreements relating to the provision of other types of services in Emergency situations.

ARTICLE II DEFINITIONS

- A. "Authorized Official" means an employee or officer of a Member Utility (defined below) authorized to: 1. Request assistance; 2. Offer assistance; 3. Refuse to offer assistance; or 4. Withdraw assistance under this Agreement.
B. "Emergency" means a natural or human caused event or circumstance causing, or imminently threatening to cause, loss of life, injury to person or property, human suffering or financial loss, and includes, but is not limited to, fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills or releases of oil or hazardous material, contamination, utility or transportation emergencies, disease, blight, infestation, civil disturbance, riot, intentional acts, sabotage and war that is, or could reasonably be, beyond the capability of the services, personnel, equipment, and facilities of a Member Utility fully manage and mitigate internally.
C. "Member Utility" – Each of the undersigned Water and Wastewater Utilities.
1. "Requesting Member" shall mean a Member Utility who requests aid or assistance under the Mutual Aid Program.
2. "Responding Member" shall mean a Member Utility who responds to a request for aid or assistance under the Mutual Aid Program.

1 3. "Non-Responding Member" means a Member Utility who does not provide aid or
2 assistance under the Mutual Aid Program.

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4 D. "Confidential Information" means all documents shared with any Member Utility that are
5 marked confidential, including but not limited to any maps, reports, notes, papers, opinions,
6 budget information or e-mails, which relate to the system vulnerabilities of a Member Utility.
7 Confidential Information may be subject to disclosure under the Maryland Public Information
8 Act and/or the Member Utility's governmental public information act.

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10 E. "Period of Assistance" means a specified period of time when a Responding Member assists
11 a Requesting Member. The period commences when personnel, equipment, or supplies
12 depart from the Responding Member's facility and ends when the resources return to their
13 facility, or in other words the Period of Assistance runs from portal to portal. All protections
14 identified in the Agreement apply during this period. The specified Period of Assistance may
15 occur during response to or recovery from an emergency, as previously defined.

16
17 F. "National Incident Management System (NIMS)" means a national, standardized approach
18 to incident management and response that sets uniform processes and procedures for
19 emergency response operations.

20
21 **ARTICLE III**
22 **ADMINISTRATION**

23
24 The Mutual Aid Program shall be administered through a Statewide Committee. The Statewide
25 Committee includes representatives from Maryland Emergency Management Agency ("MEMA"),
26 The Maryland Department of the Environment, the Maryland Rural Water Association and 5
27 Member Utilities members. Under the leadership of the Chair of the Statewide Committee, the
28 Statewide Committee shall plan and coordinate emergency planning and response activities for
29 the Mutual Aid Program. The purpose of the Statewide Committee is to provide local
30 coordination of the Mutual Aid Program before, during, and after an emergency. The Statewide
31 Committee under the leadership of an elected Chairperson, shall meet annually to address
32 Mutual Aid Program issues and to review emergency preparedness and response procedures.

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34 **ARTICLE IV**
35 **PROCEDURES**

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37 The Statewide Committee shall develop operational and planning procedures for the Mutual Aid
38 Program (collectively the "Procedures Manual") within six (6) months from the date of this
39 Agreement. The Procedures Manual upon completion shall be distributed to all Member Utilities
40 and Advisory Members. The Procedures Manual shall be reviewed at least annually and
41 updated as needed by the Statewide Committee.
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ARTICLE V
REQUESTS FOR ASSISTANCE

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4 A. Member Utility Responsibility. Member Utilities shall identify an Authorized Official and
5 alternates, provide contact information including 24-hour access, and maintain resource
6 information that may be available from the Member Utility for a Mutual Aid Program
7 response. The name of the Authorized Official and the contact information shall be updated
8 annually, or when changes occur, and provided to the Statewide Committee.

9
10 In the event of an Emergency, a Requesting Member's Authorized Official may request
11 mutual aid and assistance from a Member Utility. Requests for assistance can be made
12 orally or in writing. When made orally, the request for personnel, equipment, and supplies
13 shall be delivered in writing as soon as practical. Requests for assistance shall be directed
14 to the Authorized Official of the Member Utility from which assistance is being requested.
15 Specific protocols for requesting aid shall be provided in the Procedures Manual.

- 16
17 B. Response to a Request for Assistance. Member Utilities are not obligated to respond to a
18 request. After a Member Utility receives a request for assistance, the Authorized Official
19 evaluates whether or not its Member Utility can respond, by considering whether resources
20 are available to respond, or if there are circumstances that might hinder a response.
21 Following the evaluation, the Authorized Representative shall inform, as soon as possible,
22 the Requesting Member whether the Member Utility will respond. If the Member Utility is
23 willing and able to provide assistance, the Member Utility shall inform the Requesting
24 Member about the type of available resources and the approximate arrival time of such
25 assistance.

- 26
27 C. Discretion of Responding Member's Authorized Official. – Execution of this Agreement does
28 not create any duty or legal obligation on the part of a Member Utility to respond to a request
29 for assistance. When a Member Utility receives a request for assistance, the Authorized
30 Official shall have sole and absolute discretion as to whether or not to respond, and the
31 availability of resources to be used in such response. An Authorized Member's decisions
32 regarding responding and/or the availability of resources shall be final and shall not be
33 challenged by any other Member Utility.

34
35 **ARTICLE VI**
36 **RESPONDING MEMBER PERSONNEL**

- 37
38 A. National Incident Management System ("NIMS"). When providing assistance under this
39 Agreement, the Requesting Member and Responding Member shall be organized and shall
40 function under NIMS.
41
42 B. Control. When a Responding Member's employees provide mutual aid and assistance, the
43 Responding Member's employees come under the direction and control of the Requesting
44 Member, consistent with NIMS Incident Command System to address the needs identified
45 by the Requesting Member. The Requesting Member's Authorized Official shall coordinate
46 response activities with the Responding Member's supervisor of personnel (the
47 "Supervisor"), as designated by the Authorized Official of the Responding Member. The
48 Responding Member's Supervisor must keep accurate records of work performed by all
49 personnel during the Period of Assistance.
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- 1 C. Food and Shelter. Whenever practical, the Responding Member personnel must be self-
 2 sufficient for up to 72 hours. When possible, the Requesting Member shall supply
 3 reasonable food and shelter for Responding Member personnel. If the Requesting Member
 4 is unable to provide food and shelter for the Responding Member personnel, the
 5 Responding Member's Supervisor is authorized to secure the resources necessary to meet
 6 the needs of its personnel. Except as provided below, the cost for such resources must not
 7 exceed the State per diem rates for that area. To the extent food and shelter costs exceed
 8 the State per diem rates for the local area, the Responding Member must demonstrate that
 9 the additional costs were reasonable and necessary under the circumstances. Unless
 10 otherwise agreed to in writing, the Requesting Member remains responsible for reimbursing
 11 the Responding Member for all reasonable and necessary costs associated with providing
 12 food and shelter, if such resources are not provided.
 13
- 14 D. Communications. The Requesting Member shall provide Responding Member personnel
 15 with radio equipment as available, or radio frequency information to program existing radios,
 16 in order to facilitate communications with local responders and utility personnel.
 17
- 18 E. Status. Unless otherwise provided by law, the Responding Member's officials, officers and
 19 employees retain the same privileges, immunities, rights, duties and benefits as provided in
 20 their respective jurisdictions and under all applicable laws, ordinances and regulations.
 21
- 22 F. Licenses and Permits. To the extent permitted by law, Responding Member personnel that
 23 hold licenses, certificates, or permits evidencing professional, mechanical, or other skills
 24 shall be allowed to carry out activities and tasks relevant and related to their respective
 25 credentials during the Period of Assistance.
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- 27 G. Right to Withdraw. The Responding Member's Authorized Official retains the right to
 28 withdraw some or all of its resources at any time and for any reason in the Responding
 29 Member's sole and absolute subjective discretion. Notice of intention to withdraw must be
 30 communicated to the Requesting Member's Authorized Official as soon as practical under
 31 the circumstances.
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33 **ARTICLE VII**
 34 **COST- REIMBURSEMENT**
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36 To the extent permitted by law and subject to budget appropriations of a Member Utility that is a
 37 governmental body, the Requesting Member shall reimburse the Responding Member the
 38 reasonable costs for each of the following categories of costs incurred during the Period of
 39 Assistance as agreed by both parties; provided, that any Responding Member may assume in
 40 whole or in part such loss, damage, expense, or other cost, or may loan such equipment or
 41 donate such services to the Requesting Member without charge or cost.
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- 43
- 44 A. Personnel. The Responding Member shall be reimbursed by the Requesting Member for
 45 personnel costs incurred for work performed during the Period of Assistance. Responding
 46 Member personnel costs shall be calculated according to the terms provided in their
 47 employment contracts or other conditions of employment. The Responding Member's
 48 Supervisor must keep accurate records of work performed by personnel during the Period of
 49 Assistance. The Requesting Member's reimbursement to the Responding Member should
 50 include all personnel costs, such as salaries or hourly wages, costs for fringe benefits, and
 51 indirect costs.

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2 B. Equipment. The Requesting Member shall reimburse the Responding Member for the use
3 of equipment during the Period of Assistance, including, but not limited to, reasonable rental
4 rates, all fuel, lubrication, maintenance and repair, transportation, and loading/unloading of
5 loaned equipment. All equipment shall be returned to the Responding Member in good
6 working order as soon as is practicable and reasonable under the circumstances. As a
7 minimum, rates for equipment use must be based on the Federal Emergency Management
8 Agency's (FEMA) Schedule of Equipment Rates. If a Responding Member uses rates
9 different from those in the FEMA Schedule of Equipment Rates, the Responding Member
10 must provide such rates in writing to the Requesting Member prior to supplying the
11 equipment. Mutual agreement on which rates are used must be reached in writing prior to
12 dispatch of the equipment. Reimbursement for equipment not referenced on the FEMA
13 Schedule of Equipment Rates must be developed based on actual recovery of costs. If
14 Responding Member must lease a piece of equipment while its equipment is being repaired,
15 Requesting Member shall reimburse Responding Member for such rental costs.
16
- 17 C. Materials and Supplies. The Requesting Member must reimburse the Responding Member
18 in kind or at actual replacement cost, plus handling charges, for use of expendable or non-
19 returnable supplies. The Responding Member must not charge direct fees or rental charges
20 to the Requesting Member for other supplies and reusable items that are returned to the
21 Responding Member in a clean, damage-free condition. Reusable supplies that are
22 returned to the Responding Member with damage must be treated as expendable supplies
23 for purposes of cost reimbursement.
24
- 25 D. Payment Period. The Responding Member must provide an itemized bill to the Requesting
26 Member for all expenses incurred by the Responding Member while providing assistance
27 under this Agreement. The Requesting Member must receive the itemized bill within ninety
28 (90) days following the end of the Period of Assistance. The Responding Member may
29 request additional periods of time within which to submit the itemized bill, and Requesting
30 Member shall not unreasonably withhold consent to such request. The Requesting Member
31 must pay the bill in full on or before the forty-fifth (45th) day following the billing date. The
32 Requesting Member may request additional periods of time within which to pay the itemized
33 bill, and Responding Member shall not unreasonably withhold consent to such request,
34 provided, however, that full payment shall occur no later than the extension of time agreed
35 to by the Responding Member.
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- 37 E. Records. Each Responding Member and its Authorized Official and Supervisor shall have
38 access to a Requesting Member's books, documents, notes, reports, papers and records
39 which are directly pertinent to this Agreement for the purposes of reviewing the accuracy of
40 a cost bill or making a financial, maintenance or regulatory audit. Each Requesting Member
41 and its Authorized Official and Supervisor, if applicable, shall have access to a Responding
42 Member's books, documents, notes, reports, papers and records which are directly pertinent
43 to this Agreement for the purposes of reviewing the accuracy of a cost bill or making a
44 financial, maintenance or regulatory audit. Such records shall be maintained for at least
45 three (3) years or longer where required by law, and the review of such records shall be kept
46 strictly confidential, unless otherwise required by law.

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ARTICLE VIII
DISPUTES

If any controversy or claim arises out of, or relates to, the execution of the Agreement, including, but not limited to, an alleged breach of the Agreement, the disputing Member Utilities shall first attempt to resolve the dispute by negotiation, followed by mediation. If the matter is not resolved through negotiation or mediation, then suit may be brought in any court of competent jurisdiction in the State of Maryland.

ARTICLE IX
REQUESTING MEMBER'S DUTY TO INDEMNIFY

To the extent permitted by law and subject to budget appropriations of a Member Utility that is a governmental body, the Requesting Member covenants to defend, indemnify and hold harmless the Responding Member, its officials, officers and employees, from all claims, loss, damage, injury, death, expenses (including reasonable attorney's fees), and liability of every kind, nature and description, whatsoever, directly or indirectly arising from Responding Member's work during a Period of Assistance. The scope of the Requesting Member's covenant and obligation to indemnify includes, but is not limited to, suits arising from, or related to, negligent or wrongful use of equipment or supplies on loan to the Requesting Member, or faulty workmanship or other negligent acts, errors or omissions by Requesting Member or the Responding Member personnel during the Period of Assistance.

As to the third parties making the claims that would be indemnified under this Article IX, nothing contained herein shall be construed as a waiver of any immunities or defenses to which a Member Utility may be entitled as to those third parties, and all immunities and defenses are hereby preserved.

ARTICLE X
WORKER'S COMPENSATION CLAIMS

The Responding Member is responsible for providing worker's compensation benefits and administering worker's compensation for its employees. The Requesting Member is responsible for providing worker's compensation benefits and administering worker's compensation for its employees.

ARTICLE XI
NOTICE

A Member Utility, who becomes aware of a threatened or filed claim or suit that in anyway, directly or indirectly, affects or might affect other Member Utility, shall provide prompt and timely notice to all Member Utilities. Each Member Utility reserves the right to participate in the defense of such claims or suits as necessary to protect its own interests.

1 **ARTICLE XII**
2 **INSURANCE**
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4 Each Member Utility shall maintain an insurance policy or maintain a self insurance program
5 that insures activities that a Member Utility might undertake by virtue of membership in the
6 Mutual Aid Program and being a signatory of this Agreement.
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8 **ARTICLE XIII**
9 **CONFIDENTIAL INFORMATION**
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11 To the extent allowed by law, each Member Utility shall maintain in the strictest of confidence
12 and shall take all reasonable steps necessary to prevent the disclosure of Confidential
13 Information disclosed under this Agreement. If any Member Utility, third party or other entity
14 requests or demands, by subpoena or otherwise, that a Member or Associate Member disclose
15 any Confidential Information, the Member Utility shall immediately notify the owner of the
16 Confidential Information and shall take all reasonable steps necessary to prevent the disclosure
17 of Confidential Information by asserting all applicable rights and privileges with respect to such
18 information and shall cooperate fully in any judicial or administrative proceeding relating thereto.
19 Confidential Information may be subject to disclosure under the Maryland Public Information Act
20 and/or the Member Utility's governmental public information act.
21

22 **ARTICLE XIV**
23 **EFFECTIVE DATE and COUNTERPARTS**
24

25 This Agreement shall be effective as to a Member Utility after the Member Utility's Authorized
26 Official has been duly authorized to sign and then executes the Agreement and the Statewide
27 Committee Chair receives the signed Agreement. The Statewide Committee Chair shall
28 maintain a list of all Member Utilities. The Statewide Committee Chair shall maintain a master
29 list of all members of the Mutual Aid Program. This Agreement may be signed in counterparts,
30 with all counterparts being deemed to be legally effective and one Agreement binding all
31 signatories.
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33 **ARTICLE XV**
34 **WITHDRAWAL**
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36 A Member Utility may withdraw from this Agreement by providing written notice of its intent to
37 withdraw to the Statewide Committee Chair. Withdrawal shall be effective 60 days after the
38 date that the appropriate committee chairs receive said notice. Withdrawal from this Agreement
39 by any Member Utility shall in no way affect a Requesting Member's duty to reimburse a
40 Responding Member for cost incurred during a Period of Assistance or a Requesting Member's
41 duty to indemnify a Responding Member, which duties shall survive any such withdrawal.
42

43 **ARTICLE XVI**
44 **MODIFICATION**
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46 No provision of this Agreement may be modified, altered or rescinded by individual Member
47 Utilities. In accordance with the procedures set forth in this Article XVI, modifications to this
48 Agreement may be made due to programmatic operational changes to support the Agreement,
49 legislative action, creation of an interstate aid and assistance agreement, or other similar
50 developments. Modifications require a simple majority vote of Members. The Statewide
51 Committee Chair must provide written notice to all Member Utilities of approved modifications to

1 this Agreement. Approved modifications take effect 60 days after the date upon which notice is
2 sent to the Member Utilities.

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4 **ARTICLE XVII**
5 **SEVERABILITY**

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

12
13 **ARTICLE XVIII**
14 **PRIOR AGREEMENTS**

15
16 This Agreement supersedes all prior agreements, of any kind, between Member Utilities to the
17 extent that such prior agreements are inconsistent with this Agreement.

18
19 **ARTICLE XIX**
20 **NO THIRD-PARTY BENEFICIARIES**
21 **AND NO ASSIGNMENT OF RIGHTS/DUTIES**

22
23 This Agreement is for the sole benefit of the Member Utilities and no person or entity shall have
24 any rights or remedies under this Agreement as a third-party beneficiary or successor or assign.
25 Assignments of benefits and delegations of duties created by this Agreement are prohibited and
26 shall have no legal effect.

27
28 **ARTICLE XX**
29 **INTRASTATE AND INTERSTATE MUTUAL AID PROGRAMS**

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31 To the extent practical, Member Utilities shall participate in Mutual Aid and Assistance Programs
32 of the State of Maryland and the Interstate Emergency Management Assistance Compact
33 (EMAC). Members may voluntarily agree to participate in an interstate Mutual Aid and
34 Assistance Program for water and wastewater utilities through this Agreement if such a program
35 is established.

36
37
38 [Signatures follow on the next page.]
39
40

Now, therefore, in consideration of the terms, covenants, conditions and obligations set forth in this Agreement, the undersigned Water and Wastewater Utility evidences its intent to be a Member Utility of the Intrastate Mutual Aid and Assistance Program for Water and Wastewater Utilities by executing this Agreement on this _____ day of _____ 20__.

HOWARD COUNTY, MARYLAND

ATTEST:

Lonnie R. Robbins
Chief Administrative Officer

By: _____(SEAL)
Ken Ulman
County Executive
Howard County

APPROVED: DEPARTMENT OF
PUBLIC WORKS

James M. Irvin, Director

APPROVED FOR SUFFICIENCY
OF FUNDS:

Sharon Greisz, Director
Department of Finance

APPROVED as to Form and Legal Sufficiency
This _____ day of _____, 2009

Margaret Ann Nolan
County Solicitor

1
2 **HARFORD COUNTY, MARYLAND**

3
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5
6 _____

_____ (Seal)
7 David R. Craig
8 County Executive

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11 Approved as to form and legal
12 sufficiency this _____ day of
13 _____, 2009.

Recommended for approval this
_____ day of _____,
2009.

14
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16 _____
17 Margaret Hartka
18 Senior Assistant County Attorney

Robert B. Cooper, P.E., Director
Department of Public Works

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22 Recommended for approval this
23 _____ day of _____, 2009.

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26 _____
27 Joel V. Caudill, P.E., Deputy Director
28 Department of Public Works
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Member Utility:

By: _____

Title: _____

Please Print Name

By: _____

Title _____

Please Print Name

Approved as to form and legal
sufficiency

By: _____

Please Print Name

