

1 **Maryland Mutual Aid and Assistance Agreement for Intrastate**
2 **Water/Wastewater Agency Response Network (MDWARN)**

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4
5 **AGREEMENT**
6

7 This Agreement (the "Agreement") is made and entered into by public and private Water and
8 Wastewater Utilities (the "Utilities") operating in Maryland, who, by executing this Agreement join
9 the Maryland Water/Wastewater Agency Response Network ("MDWARN") and bind themselves
10 to participate in Maryland's Intrastate Program for Mutual Aid and Assistance (the "Mutual Aid
11 Program").
12

13 **ARTICLE I**
14 **PURPOSE**
15

16 The Utilities hereby establish the Mutual Aid Program to coordinate response activities and share
17 resources during emergencies, including without limitation providing on a cost basis personnel,
18 equipment, and supplies. This Agreement sets forth the procedures and standards for the
19 administration of the Mutual Aid Program across jurisdictional and county boundaries in the State
20 of Maryland. This Mutual Aid Program is limited to Water and Wastewater Utilities, and in no way
21 affects other mutual aid or other agreements relating to the provision of other types of services in
22 Emergency situations.
23

24 **ARTICLE II**
25 **DEFINITIONS**
26

- 27 A. "Authorized Official" means an employee or officer of a Member Utility (defined below)
28 authorized to:
29 1. Request assistance;
30 2. Offer assistance;
31 3. Refuse to offer assistance; or
32 4. Withdraw assistance under this Agreement.
33
- 34 B. "Emergency" means a natural or human caused event or circumstance causing, or imminently
35 threatening to cause, loss of life, injury to person or property, human suffering or financial
36 loss, and includes, but is not limited to, fire, explosion, flood, severe weather, drought,
37 earthquake, volcanic activity, spills or releases of oil or hazardous material, contamination,
38 utility or transportation emergencies, disease, blight, infestation, civil disturbance, riot,
39 intentional acts, sabotage and war that is, or could reasonably be, beyond the capability of
40 the services, personnel, equipment, and facilities of a Member Utility fully manage and
41 mitigate internally.
42
- 43 C. "Member Utility" – Each of the undersigned Water and Wastewater Utilities.
44
45 1. "Requesting Member" shall mean a Member Utility who requests aid or assistance under
46 the Mutual Aid Program.
47
48 2. "Responding Member" shall mean a Member Utility who responds to a request for aid or
49 assistance under the Mutual Aid Program.
50

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

3
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.

9
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 to
18 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 coordination
30 of the Mutual Aid Program before, during, and after an emergency. The Statewide Committee
31 under the leadership of an elected Chairperson, shall meet annually to address Mutual Aid
32 Program issues and to review emergency preparedness and response procedures.

33
34 **ARTICLE IV**
35 **PROCEDURES**

36
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 updated
41 as needed by the Statewide Committee.

42
43 **ARTICLE V**
44 **REQUESTS FOR ASSISTANCE**

45
46 A. Member Utility Responsibility. Member Utilities shall identify an Authorized Official and
47 alternates, provide contact information including 24-hour access, and maintain resource
48 information that may be available from the Member Utility for a Mutual Aid Program response.

1 The name of the Authorized Official and the contact information shall be updated annually, or
2 when changes occur, and provided to the Statewide Committee.

3
4 In the event of an Emergency, a Requesting Member's Authorized Official may request mutual
5 aid and assistance from a Member Utility. Requests for assistance can be made orally or in
6 writing. When made orally, the request for personnel, equipment, and supplies shall be
7 delivered in writing as soon as practical. Requests for assistance shall be directed to the
8 Authorized Official of the Member Utility from which assistance is being requested. Specific
9 protocols for requesting aid shall be provided in the Procedures Manual.

10
11 B. Response to a Request for Assistance. Member Utilities are not obligated to respond to a
12 request. After a Member Utility receives a request for assistance, the Authorized Official
13 evaluates whether or not its Member Utility can respond, by considering whether resources
14 are available to respond, or if there are circumstances that might hinder a response. Following
15 the evaluation, the Authorized Representative shall inform, as soon as possible, the
16 Requesting Member whether the Member Utility will respond. If the Member Utility is willing
17 and able to provide assistance, the Member Utility shall inform the Requesting Member about
18 the type of available resources and the approximate arrival time of such assistance.

19
20 C. Discretion of Responding Member's Authorized Official. – Execution of this Agreement does
21 not create any duty or legal obligation on the part of a Member Utility to respond to a request
22 for assistance. When a Member Utility receives a request for assistance, the Authorized
23 Official shall have sole and absolute discretion as to whether or not to respond, and the
24 availability of resources to be used in such response. An Authorized Member's decisions
25 regarding responding and/or the availability of resources shall be final and shall not be
26 challenged by any other Member Utility.

27
28 **ARTICLE VI**
29 **RESPONDING MEMBER PERSONNEL**

30
31 A. National Incident Management System ("NIMS"). When providing assistance under this
32 Agreement, the Requesting Member and Responding Member shall be organized and shall
33 function under NIMS.

34
35 B. Control. When a Responding Member's employees provide mutual aid and assistance, the
36 Responding Member's employees come under the direction and control of the Requesting
37 Member, consistent with NIMS Incident Command System to address the needs identified by
38 the Requesting Member. The Requesting Member's Authorized Official shall coordinate
39 response activities with the Responding Member's supervisor of personnel (the "Supervisor"),
40 as designated by the Authorized Official of the Responding Member. The Responding
41 Member's Supervisor must keep accurate records of work performed by all personnel during
42 the Period of Assistance.

43
44 C. Food and Shelter. Whenever practical, the Responding Member personnel must be self-
45 sufficient for up to 72 hours. When possible, the Requesting Member shall supply reasonable
46 food and shelter for Responding Member personnel. If the Requesting Member is unable to
47 provide food and shelter for the Responding Member personnel, the Responding Member's
48 Supervisor is authorized to secure the resources necessary to meet the needs of its
49 personnel. Except as provided below, the cost for such resources must not exceed the State
50 per diem rates for that area. To the extent food and shelter costs exceed the State per diem
51 rates for the local area, the Responding Member must demonstrate that the additional costs

1 were reasonable and necessary under the circumstances. Unless otherwise agreed to in
2 writing, the Requesting Member remains responsible for reimbursing the Responding Member
3 for all reasonable and necessary costs associated with providing food and shelter, if such
4 resources are not provided.

- 5
- 6 D. Communications. The Requesting Member shall provide Responding Member personnel with
7 radio equipment as available, or radio frequency information to program existing radios, in
8 order to facilitate communications with local responders and utility personnel.
- 9
- 10 E. Status. Unless otherwise provided by law, the Responding Member's officials, officers and
11 employees retain the same privileges, immunities, rights, duties and benefits as provided in
12 their respective jurisdictions and under all applicable laws, ordinances and regulations.
- 13
- 14 F. Licenses and Permits. To the extent permitted by law, Responding Member personnel that
15 hold licenses, certificates, or permits evidencing professional, mechanical, or other skills shall
16 be allowed to carry out activities and tasks relevant and related to their respective credentials
17 during the Period of Assistance.
- 18
- 19 G. Right to Withdraw. The Responding Member's Authorized Official retains the right to withdraw
20 some or all of its resources at any time and for any reason in the Responding Member's sole
21 and absolute subjective discretion. Notice of intention to withdraw must be communicated to
22 the Requesting Member's Authorized Official as soon as practical under the circumstances.
- 23

24 **ARTICLE VII**
25 **COST- REIMBURSEMENT**

26

27 To the extent permitted by law and subject to budget appropriations of a Member Utility that is a
28 governmental body, the Requesting Member shall reimburse the Responding Member the
29 reasonable costs for each of the following categories of costs incurred during the Period of
30 Assistance as agreed by both parties; provided, that any Responding Member may assume in
31 whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate
32 such services to the Requesting Member without charge or cost.

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- 34
- 35 A. Personnel. The Responding Member shall be reimbursed by the Requesting Member for
36 personnel costs incurred for work performed during the Period of Assistance. Responding
37 Member personnel costs shall be calculated according to the terms provided in their
38 employment contracts or other conditions of employment. The Responding Member's
39 Supervisor must keep accurate records of work performed by personnel during the Period of
40 Assistance. The Requesting Member's reimbursement to the Responding Member should
41 include all personnel costs, such as salaries or hourly wages, costs for fringe benefits, and
42 indirect costs.
- 43

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

47 **ARTICLE VIII**
48 **DISPUTES**
49

50 If any controversy or claim arises out of, or relates to, the execution of the Agreement, including,
51 but not limited to, an alleged breach of the Agreement, the disputing Member Utilities shall first

1 attempt to resolve the dispute by negotiation, followed by mediation. If the matter is not resolved
2 through negotiation or mediation, then suit may be brought in any court of competent jurisdiction
3 in the State of Maryland.

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

18
19 As to the third parties making the claims that would be indemnified under this Article IX, nothing
20 contained herein shall be construed as a waiver of any immunities or defenses to which a Member
21 Utility may be entitled as to those third parties, and all immunities and defenses are hereby
22 preserved.

23
24 **ARTICLE X**
25 **WORKER'S COMPENSATION CLAIMS**
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27 The Responding Member is responsible for providing worker's compensation benefits and
28 administering worker's compensation for its employees. The Requesting Member is responsible
29 for providing worker's compensation benefits and administering worker's compensation for its
30 employees.

31
32 **ARTICLE XI**
33 **NOTICE**
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35 A Member Utility, who becomes aware of a threatened or filed claim or suit that in anyway, directly
36 or indirectly, affects or might affect other Member Utility, shall provide prompt and timely notice to
37 all Member Utilities. Each Member Utility reserves the right to participate in the defense of such
38 claims or suits as necessary to protect its own interests.

39
40 **ARTICLE XII**
41 **INSURANCE**
42

43 Each Member Utility shall maintain an insurance policy or maintain a self insurance program that
44 insures activities that a Member Utility might undertake by virtue of membership in the Mutual Aid
45 Program and being a signatory of this Agreement.

46
47 **ARTICLE XIII**
48 **CONFIDENTIAL INFORMATION**
49

50 To the extent allowed by law, each Member Utility shall maintain in the strictest of confidence and
51 shall take all reasonable steps necessary to prevent the disclosure of Confidential Information

1 disclosed under this Agreement. If any Member Utility, third party or other entity requests or
2 demands, by subpoena or otherwise, that a Member or Associate Member disclose any
3 Confidential Information, the Member Utility shall immediately notify the owner of the Confidential
4 Information and shall take all reasonable steps necessary to prevent the disclosure of Confidential
5 Information by asserting all applicable rights and privileges with respect to such information and
6 shall cooperate fully in any judicial or administrative proceeding relating thereto. Confidential
7 Information may be subject to disclosure under the Maryland Public Information Act and/or the
8 Member Utility's governmental public information act.
9

10 **ARTICLE XIV**
11 **EFFECTIVE DATE and COUNTERPARTS**
12

13 This Agreement shall be effective as to a Member Utility after the Member Utility's Authorized
14 Official has been duly authorized to sign and then executes the Agreement and the Statewide
15 Committee Chair receives the signed Agreement. The Statewide Committee Chair shall maintain
16 a list of all Member Utilities. The Statewide Committee Chair shall maintain a master list of all
17 members of the Mutual Aid Program. This Agreement may be signed in counterparts, with all
18 counterparts being deemed to be legally effective and one Agreement binding all signatories.
19

20 **ARTICLE XV**
21 **WITHDRAWAL**
22

23 A Member Utility may withdraw from this Agreement by providing written notice of its intent to
24 withdraw to the Statewide Committee Chair. Withdrawal shall be effective 60 days after the date
25 that the appropriate committee chairs receive said notice. Withdrawal from this Agreement by
26 any Member Utility shall in no way affect a Requesting Member's duty to reimburse a Responding
27 Member for cost incurred during a Period of Assistance or a Requesting Member's duty to
28 indemnify a Responding Member, which duties shall survive any such withdrawal.
29

30 **ARTICLE XVI**
31 **MODIFICATION**
32

33 No provision of this Agreement may be modified, altered or rescinded by individual Member
34 Utilities. In accordance with the procedures set forth in this Article XVI, modifications to this
35 Agreement may be made due to programmatic operational changes to support the Agreement,
36 legislative action, creation of an interstate aid and assistance agreement, or other similar
37 developments. Modifications require a simple majority vote of Members. The Statewide
38 Committee Chair must provide written notice to all Member Utilities of approved modifications to
39 this Agreement. Approved modifications take effect 60 days after the date upon which notice is
40 sent to the Member Utilities.
41

42 **ARTICLE XVII**
43 **SEVERABILITY**
44

45 The parties agree that if any term or provision of this Agreement is declared by a court of
46 competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining
47 terms and provisions shall not be affected, and the rights and obligations of the parties
48 shall be construed and enforced as if the Agreement did not contain the particular term
49 or provision held to be invalid.
50

1 **ARTICLE XVIII**
2 **PRIOR AGREEMENTS**

3
4 This Agreement supersedes all prior agreements, of any kind, between Member Utilities to the
5 extent that such prior agreements are inconsistent with this Agreement.
6

7 **ARTICLE XIX**
8 **NO THIRD-PARTY BENEFICIARIES**
9 **AND NO ASSIGNMENT OF RIGHTS/DUTIES**

10
11 This Agreement is for the sole benefit of the Member Utilities and no person or entity shall have
12 any rights or remedies under this Agreement as a third-party beneficiary or successor or assign.
13 Assignments of benefits and delegations of duties created by this Agreement are prohibited and
14 shall have no legal effect.
15

16 **ARTICLE XX**
17 **INTRASTATE AND INTERSTATE MUTUAL AID PROGRAMS**

18
19 To the extent practical, Member Utilities shall participate in Mutual Aid and Assistance Programs
20 of the State of Maryland and the Interstate Emergency Management Assistance Compact
21 (EMAC). Members may voluntarily agree to participate in an interstate Mutual Aid and Assistance
22 Program for water and wastewater utilities through this Agreement if such a program is
23 established.
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25
26 [Signatures follow on the next page.]
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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__.

ATTEST:

By: _____(SEAL)

Locality _____, MARYLAND

_____ (Seal)

Approved as to form and legal sufficiency this _____ day of _____, 20__.

Recommended for approval this _____ day of _____, 20__.

Senior Assistant County Attorney

Director
Department of Public Works

Recommended for approval this _____ day of _____, 20__.
