



NATIONAL CAPITAL REGION WATER AND WASTEWATER MUTUAL AID AGREEMENT

I. INTRODUCTION

This Mutual Aid Agreement (Agreement) is made and entered into on _____ by the Signatories of this Agreement responsible for water supply and wastewater management within the National Capital Region (NCR). It is implemented under the authority of the federal Intelligence Reform and Terrorism Protection Act of 2004, Public Law 108-458, specifically Section 7302, as amended, authorizing the establishment of mutual aid agreements in the National Capital Region.

1. Authority: This Agreement has been executed by the heads of the signatory water and wastewater agencies or authorities, who have in turn been authorized to do so by their respective governing bodies. By execution of this Agreement document, the signatory representatives certify that they have been so authorized.
2. Role of Metropolitan Washington Council of Governments (COG): The Metropolitan Washington Council of Governments participates in activities covered by this Agreement as staff support for administrative maintenance of the Agreement, not as a signatory. It may also assist Signatories in coordinating initial requests for mutual aid assistance. It is not envisioned that COG will be a required intermediary in arranging the details of mutual aid delivery, or in reimbursement efforts. These arrangements will be handled by the individual Signatories.
3. Withdrawal: An agency or authority Signatories to this Agreement may withdraw from participation in the Agreement by written notification, upon 30 days notice. Withdrawal from this Agreement shall in no way affect a Requesting Signatory's duty to reimburse a Responding Signatory for cost incurred during a Period of Assistance, which duty shall survive such withdrawal.
4. Intrastate Assistance and EMAC: Nothing in this Agreement is intended to interfere with Signatory's ability to request assistance or provide assistance under a state emergency management process, either within the state or out-of-state as part of the Emergency Management Assistance Compact (EMAC) process.
5. Resource Inventory: Signatories to this Agreement, upon signing, shall provide an inventory of equipment resources and staff provisions to a centrally managed, annually-updated database accessible by all Signatories. Upon request of the Signatories, and with appropriate financial support, COG will manage such database under such security provisions as may be agreed upon by the Signatories.

II. DEFINITIONS

In addition to the definitions set out below, the definitions included in the Intelligence Reform Act are incorporated by reference into this Agreement.

“Authorized Official” - An individual that is authorized by the Signatory’s governing body or senior management (e.g. executive director or general manager, etc.) to request assistance or offer assistance under this Agreement.

“Emergency”- An Emergency may be declared by the President of the United States or authorized representative of the federal government. A State of Emergency may be declared by the Governor of Maryland or Virginia or the Mayor of the District of Columbia, or such person delegated such authority pursuant to the respective laws of Maryland, Virginia, or the District of Columbia, or may be declared by the Authorized Official of any local jurisdiction within the service area of any of the signatory parties hereto. A Water Emergency, as defined herein, may be declared by the Chief Operating Officer of a water or wastewater utility operating within the NCR. When an Emergency, State of Emergency, or Water Emergency exists within the boundaries of any of the parties hereto, as the result of, or due to the imminence of fire, flood, epidemic, war, internal disorder, act of terrorism, or other natural or human-caused disaster, the party or parties initially impacted shall notify other parties to this Agreement of such Emergency State of Emergency, or Water Emergency, and, if necessary or desirable its need for assistance. Assistance shall be rendered according to the procedures established and agreed to by the parties to this Agreement. Each party shall designate its appropriate Authorized Official or Officials who are empowered to request assistance, or agree to provide assistance, under this Agreement. As used here after, the term “emergency” will include a Water Emergency.

“Homeland Security Presidential Directive-5 (HSPD-5)” - A Presidential directive issued on February 28, 2003 and intended to enhance the ability of the United States to manage domestic incidents by establishing a single, comprehensive national incident management system.

"Intelligence Reform Act" - The Intelligence Reform and Terrorism Protection Act of 2004, Pub. L. 108-458, Section 7302, 118 Stat. 3638, 3840, as it may be amended from time to time.

“Signatory” - Any public Water or Wastewater agency or authority that manifests intent to participate in Water and Wastewater Mutual Aid by executing this Agreement.

“National Incident Management System (NIMS)” - A system mandated by HSPD-5 that provides a consistent nationwide approach for Federal, State, and local governments to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents, regardless of cause, size, or complexity. Its provisions are documented in FEMA Document 501, March 1, 2004, as it may be amended from time to time. NIMS includes utilization of the defined Incident Command System, which describes specific operational relationships in

management of an incident, including designation of an Incident Commander and supporting staff structure.

“Period of Assistance” - A specified period of time when a Responding Signatory assists a Requesting Signatory. The period commences when personnel, equipment, or supplies depart from a Responding Signatory’s facility and ends when the resources return to their facility (portal to portal). All protections identified in the agreement apply during this period.

"Public Service Event" - A Public Service Event may be certified by any of the Authorized Officials referenced in Paragraph 2 herein. A Public Service Event may be a one-time, discrete event, not reaching the nature or criteria requiring the declaration of an Emergency or State of Emergency, but still requiring inter-jurisdictional support and assistance. The activities or situations giving rise to Public Service Events often are known in advance, affording the parties the ability to specifically plan for inter-jurisdictional mutual aid to be requested and afforded. Public Service Events may also be recurrent activities, where the provision of inter-jurisdictional assistance expedites the response to a particular need or fills in temporary gaps in the service of the requesting jurisdiction. Once the nature and general definition of such recurrent public service events is certified by an Authorized Official, the actual request for response may be made in the normal course of activity by delegated subordinates. Assistance shall be rendered according to the procedures established and agreed to by the parties to this Agreement. Each party shall designate its appropriate Authorized Official or Officials who are empowered to request assistance under this Agreement.

“Requesting Signatory” - A Signatory who requests assistance under this Agreement.

“Responding Signatory” - A Signatory that responds to a request for assistance under this Agreement.

“Water Emergency” - A natural or manmade event impacting a water or wastewater system, which is, or is likely to be, beyond the control of the services, personnel, equipment, and facilities of a Signatory.

III. DESIGNATION OF AUTHORIZED OFFICIALS

1. Introduction: The Signatories recognize that the individuals designated to serve as Authorized Officials will change during the duration of this Agreement and that it would not be practical to amend the Agreement every time this authority is granted or withdrawn from an individual. Therefore, this Agreement requires each Signatory to identify at least one initial Authorized Official and sets out the procedure for notifying Signatories when the authority to act as an Authorized Official is given to or withdrawn from an individual.

2. Initial Designation: When an agency or authority becomes a Signatory in this Agreement, that agency or authority shall provide a letter identifying anyone initially authorized to serve as an Authorized Official. This letter shall be sent to COG for dissemination to the other Signatories. There may be more than one initial designation for an agency or authority.

3. Changes in Designation: Each Signatory shall notify the other Signatories and COG when a person is designated as an Authorized Official or is no longer an Authorized Official. This notice shall be given in writing *except* that when it would not be practicable to give advance written notice, the notice may be given by facsimile or e-mail, and confirmed in writing.

4. Multiple Authorized Officials: If more than one person is designated as an Authorized Official for an agency or authority, each may be considered fully authorized to act for the agency or authority in requesting or agreeing to provide assistance under this Agreement. Authorized Officials will have the responsibility for expedient notification of other Authorized Officials within their Signatory agency or authority of requests for assistance they have made or assistance they have agreed to provide.

5. Contact information: Communications regarding the designation of Authorized Officials or changes in Authorized Officials shall include contact information for 24-hour access.

IV. MAKING AN ASSISTANCE REQUEST

1. Initiating an Assistance Request: In the event of an Emergency, Water Emergency or a Public Service Event, a signatory's Authorized Official may request mutual aid and assistance from another participating signatory. Requests for assistance can be made orally or in writing. When made orally, the request for personnel, equipment, and supplies shall be prepared in writing as soon as practicable. Requests for assistance shall be directed to the Authorized Official of the potential Responding Signatory. The potential Responding Signatory is under no obligation to agree to provide assistance, and may make that determination based on current considerations of its own operations.

The initial assistance request may be initiated via a group process (e.g., e-mail, conference call, group meeting, etc.), but must conclude with bilateral understanding between Signatories incorporating the specific parameters identified in item (2) below. Upon request, COG will assist Signatories in coordinating initial requests for mutual aid assistance (e.g. setting up initial conference calls).

2. Initial Assistance Request Parameters: The initial assistance request will be accomplished in communication between Authorized Officials of a Requesting Signatory and any potential Responding Signatories. This communication will establish:

- (a) the general scope of the requested assistance (including whether the request is for staff support, equipment, materials, etc.),
- (b) the anticipated Period of Assistance,
- (c) whether the potential Responding Signatory is agreeing to assist,
- (d) whether reimbursement is anticipated, and
- (e) the identification and contact information for the staff personnel for each Signatory who will coordinate the details of the assistance. (For the Requesting Signatory, this will include identification of the Incident Commander, and if they have been designated, the Planning Section Chief, the Logistics Section Chief and the Finance/Administration Section Chief.)

The above parameters should be documented in writing. To facilitate this, an Initial Request Documentation Form and other federal forms for documenting reimbursement are provided in Appendix A.

3. Assistance Request Cancellation: A Requesting Signatory may cancel a request for assistance at any time by providing notice of the cancellation to the Signatories from whom assistance was requested. Any method reasonably expected to provide notice of the cancellation to the affected Signatories is acceptable, including but not limited to telephone, radio communications, e-mail or correspondent, provided that any oral request shall be confirmed as soon as practicable in writing or by e-mail.

V. IMPLEMENTATION OF MUTUAL AID OPERATIONS

1. National Incident Management System: When providing assistance under this Agreement, under an Emergency declared by the President of the United States, a Governor of Maryland or Virginia, the Mayor of the District of Columbia, or their authorized designees, or the Authorized Official of any local jurisdiction within the service area of any of the signatory parties hereto, the Requesting Utility and Responding Utility shall be organized and shall function under the National Incident Management System.

2. Control: Responding Signatory personnel shall remain under the direction and control of the Responding Signatory. The Responding Signatory's designated supervisor shall coordinate response activities with the Incident Command structure of the Requesting Signatory. The designated supervisor shall have the right and duty to refuse directions which the supervisor considers to be unsafe, contrary to law, or significantly not in accordance with the general scope of assistance agreed to by the Authorized Officials.

3. Food and Shelter: Whenever practical, the Requesting Signatory will provide food and shelter for Responding Signatory personnel. However, it is recognized that this may not be practical in exigent conditions, in which case the Responding Signatory's designated supervisor is authorized to secure the resources necessary to meet the needs of its personnel. The cost for such resources must not exceed the State per diem rates for the Requesting Signatory's area. The Requesting Signatory will be responsible for reimbursing the Responding Signatory for costs associated with providing food and shelter, if agreed to in advance per the Initial Request Documentation Form (Appendix) or the like.

4. Communication: The Requesting Signatory shall provide Responding Signatory personnel with radio equipment as available, or radio frequency information to program existing radio, in order to facilitate communications with local responders and utility personnel.

5. Status: Unless otherwise provided by law, the Responding Signatory's officers and employees retain the same privileges, immunities, rights, duties, and benefits as provided in their respective jurisdictions.

6. Licenses and Permits: To the extent permitted by law, Responding Signatory personnel who hold licenses, certificates, or permits evidencing professional, mechanical, or other skills shall be allowed to carry out activities and tasks relevant and related to their respective credentials during the specified Period of Assistance.

7. Safety: Staff of the Responding Signatory shall comply with standard safety procedures of the Responding Signatory and with any safety Agreements for the incident issued by the Incident Command organization of the Requesting Signatory and provided to the Responding Signatory. The supervisor of the Responding Signatory will review incident specific safety Agreements, and if there are significant conflicts between the safety Agreement and the standard safety procedures of the Responding Signatory, these will be expediently brought to the attention of the Requesting Signatory safety officer for resolution.

8. Equipment: The Responding Signatory shall only provide equipment that it reasonably believes to be in good working order and appropriate for the expected use of the equipment. If the equipment is provided with personnel to operate it, maintenance of the equipment shall be the responsibility of the Responding Signatory. If support personnel are not provided, the Responding Signatory shall provide appropriate preventive maintenance instructions, which the Requesting Signatory shall be responsible for implementing.

9. Identification: Staff from a Responding Signatory shall be equipped with personal identification from that Signatory, and shall wear apparel that identifies the Responding Signatory. Vehicles provided will also be labeled with visual identification of the Responding Signatory.

10. Liability to Third Parties: The services performed pursuant to this Agreement shall be deemed for public and governmental purposes and all immunities from liability enjoyed by the localities, their officials and their employees within its boundaries shall extend to its participation in providing mutual aid and engaging in training and exercises inside and outside its boundaries. Litigation asserting liability hereunder must comport with the provisions of Section 7302(d) of the Intelligence Reform and Terrorism Prevention Act of 2004, as amended. Nothing herein shall abrogate any immunity which may exist by statute or at common law. Where litigation asserting liability hereunder alleges joint liability among parties hereto from different states, the parties will meet to discuss and cooperate in the defense or settlement of such litigation.

11. Termination of Assistance: Normally, the assistance will be terminated upon determination of the Incident Commander that it is no longer required to address the needs of the incident, and the Responding Signatory's team will be demobilized according to NIMS procedures. However, the Responding Signatory's Authorized Official retains the right to withdraw some or all of its resources at any time. Notice of intention to withdraw must be communicated to the Requesting Signatory's Authorized Official as soon as possible and withdrawal of assistance will be coordinated in the field with the Requesting Signatory's Incident Command staff.

VI. COST REIMBURSEMENT

Unless otherwise mutually agreed in whole or in part, the Requesting Signatory shall reimburse the Responding Signatory for each of the following categories of costs incurred while providing aid and assistance during the specified Period of Assistance. In the event of a federally declared emergency, and where reimbursement is expected, the Requesting Signatory is responsible for reimbursing the Responding Signatory, but may request FEMA reimbursement.

1. Personnel: Responding Signatory personnel are to be paid for work completed during a specified Period of Assistance according to the terms provided in their employment contracts or other conditions of employment. The Responding Signatory designated supervisor(s) must keep accurate records of work performed by personnel during the specified Period of Assistance. Requesting Signatory reimbursement to the Responding Signatory must consider all personnel costs, including salaries or hourly wages, costs for fringe benefits, and indirect costs.

2. Equipment: The Requesting Signatory shall reimburse the Responding Signatory for the use of equipment during a specified Period of Assistance. As a minimum, rates for equipment use must be based on the Federal Emergency Management Agency's (FEMA) Schedule of Equipment Rates. If a Responding Signatory uses rates different from those in the FEMA Schedule of Equipment Rates, the Responding Signatory must provide such rates in writing to the Requesting Signatory prior to supplying resources. Mutual agreement on which rates are used must be reached in writing prior to dispatch of the equipment. Reimbursement for equipment not referenced on the FEMA Schedule of Equipment Rates must be developed based on actual recovery of costs.

3. Materials and Supplies: The Requesting Signatory must reimburse the Responding Signatory in kind or at actual replacement cost, plus handling charges, for use of expendable or non-returnable supplies. The Responding Signatory must not charge direct fees or rental charges to the Requesting Signatory for other supplies and reusable items that are returned to the Responding Signatory in a clean, damage-free condition. Reusable supplies that are returned to the Responding Signatory with damage must be treated as expendable supplies for purposes of cost reimbursement.

4. Payment Period:

The Responding Signatory must provide an itemized bill to the Requesting Signatory for all expenses incurred by the Responding Signatory while providing assistance under this Agreement. The Responding Signatory must send the itemized bill not later than (90) ninety days following the end of the Period of Assistance. The Responding Signatory may request additional periods of time within which to submit the itemized bill, and Requesting Signatory shall not unreasonably withhold consent to such request. The Requesting Signatory must pay the bill in full on or before the forty-fifth (45th) day following the billing date. The Requesting Signatory may request additional periods of time within which to pay the itemized bill, and Responding Signatory shall not unreasonably withhold consent to such request, provided, however, that all payment shall occur not later than one year after the date a final itemized bill is submitted to the Requesting Signatory.

5. Records - Each Responding Signatory and their duly authorized representatives shall have access to a Requesting Signatory's books, documents, notes, reports, papers and records which are directly pertinent to this Agreement for the purposes of reviewing the accuracy of a cost bill or making a financial, maintenance or regulatory audit. Each Requesting Signatory and their duly authorized representatives shall have access to a Responding Signatory's books, documents, notes, reports, papers and records which are directly pertinent to this Agreement for the purposes of reviewing the accuracy of a cost bill or making a financial, maintenance or regulatory audit. Such records shall be maintained for at least three (3) years or longer where required by law.

VII. DISPUTE PROVISION

If any controversy or claim arises out of, or relates to, the execution of the Agreement, including, but not limited to, alleged breach of the Agreement, the disputing Signatories shall first attempt to resolve the dispute by negotiation, followed by mediation and finally shall be settled by arbitration in accordance with the Rules of the American Arbitration Association. Any court of competent jurisdiction may enter the judgment rendered by the arbitrators as final judgment that is binding on the parties.

VIII. CONFIDENTIAL INFORMATION

To the extent provided by law, any Signatory or Associate Signatory shall maintain in the strictest confidence and shall take all reasonable steps necessary to prevent the disclosure of any Confidential Information disclosed under this Agreement. If any Signatory, Associate Signatory, third party or other entity requests or demands, by subpoena or otherwise, that a Signatory or Associate Signatory disclose any Confidential Information disclosed under this Agreement, the Signatory or Associate Signatory shall immediately notify the owner of the Confidential Information and shall take all reasonable steps necessary to prevent the disclosure of any Confidential Information by asserting all applicable rights and privileges with respect to such information and shall cooperate fully in any judicial or administrative proceeding relating thereto.

IX. PERIODIC REVIEWS

Annually on the approximate anniversary of the effective date of the Agreement, the COG will coordinate a review and update of the Agreement by the Signatories. This review and update will include the following components:

1. Activities Review: A listing of assistance provided under the auspices of the Agreement between Signatories for Water Emergencies and Public Service Events. This will include a brief summary of the incident and the nature of the assistance provided. This review will include a brief description of any joint training activities undertaken by multiple Signatories for the purpose of promoting increased effectiveness of assistance under the Agreement.
2. Authorized Official Information Update: Redesignation of existing Authorized Officials or designation of new Authorized Officials, including provision of 24-hour contact information.

3. Resource Inventory: Updated listing by each Signatory of resources that would be most likely to be shared under the Agreement, including the anticipated cost reimbursement rates. This listing, which is not envisioned to be comprehensive, would include:

- (a) Deployable personnel teams,
- (b) Field or other equipment,
- (c) Material stockpiles and expendables.

4. Proposed Agreement Revisions: Proposals by Signatories of revisions which might be made to the Agreement, or to related regional agreements, for enhanced mutual aid assistance and coordination.

X. AGREEMENT MODIFICATIONS AND SUPPORTING ANNEXES

1. This Agreement may be modified upon agreement of the Signatories. Upon receipt of a proposed modification from a Signatory, COG will facilitate a timely exchange of information and viewpoints on the proposed modification with the objective of obtaining agreement of the Signatories for adoption or rejection by a time certain. Specific modification to the Agreement document will be accomplished on the basis of receipt by COG of written affirmation of the proposed change by at least two thirds of the Signatories. Once a non-approving Signatory is informed by COG or by another Signatory that the amendment has been approved by a two-thirds vote, the amendment will go into effect after 90 days, and the non-approving Signatory will be deemed to have withdrawn from the Agreement.

2. As deemed appropriate to expedite operations under this Agreement, supporting annexes may be developed. Such annexes would be expected to cover such topics as the management, maintenance and operation of shared resources acquired for the region (e.g. mobile response laboratories, etc.) or standard procedures for anticipated recurrent activities. These annexes may be proposed by any Signatory or by COG, and will be reviewed and adopted based on consensus of the Signatories, consistent with the paragraph 1 above.

XI. SEVERABILITY PROVISION

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 or provision held to be invalid.

XII. PROHIBITION ON THIRD PARTIES AND ASSIGNMENT OF RIGHTS OR BENEFITS

This Agreement is for the sole benefit of the Signatories and no person or entity may have any rights under this Agreement as a third party beneficiary. Assignments of benefits and delegations of duties created by this Agreement are prohibited and must be without effect.

XIII. EXECUTION

This Agreement and any amendments thereto may be executed in duplicate originals and filed with COG. The Agreement shall be considered in effect upon its execution by two qualifying agencies or authorities.

IN WITNESS WHEREOF, the parties have executed this Agreement and, by so doing, certify that the respective officials executing this Agreement on their behalf have been duly authorized to enter into this National Capital Region Water and Wastewater Mutual Aid Agreement.

Water/Wastewater System: _____

By: _____

Date: _____

APPENDIX A: Reimbursement Forms

**INITIAL REQUEST DOCUMENTATION FORM
NCR WATER AND WASTEWATER MUTUAL AID NETWORK**

<p style="text-align: right;">Date: _____</p> <p>Requesting Signatory: _____ Authorized Official: _____</p> <p>Responding Signatory: _____ Authorized Official: _____ <input type="checkbox"/> Agreed</p>
<p><input type="checkbox"/> Staff Support: _____ _____</p> <p><input type="checkbox"/> Equipment: _____ _____</p> <p><input type="checkbox"/> Material: _____ _____ _____</p>
<p>Reimbursement Expected: <input type="checkbox"/> Yes <input type="checkbox"/> No Note: Reimbursable costs are to be tracked by the Responding Signatory and invoiced consistent with current FEMA procedures, as provided in Agreement section VI.</p>
<p>Anticipated Period of Time of Assistance: _____</p>
<p>Designated implementing staff: Requesting Signatory: Incident Commander: _____ Contact Info: _____ Support Command Staff: _____ _____</p> <p>Responding Signatory: _____ Contact Info: _____</p>
<p>Notes: _____ _____</p>

