

San Mateo County Mutual Aid Agreement

THIS MUTUAL AID AGREEMENT ("Agreement") is made and entered into by those local government public works agencies (here after "public work agencies") and private resources who have adopted and signed this Agreement:

Whereas, the federal Department of Homeland Security, Governor's Office of Emergency Services, California State Association of Counties, City/County Association of Governments in San Mateo County, League of California Cities, and the American Public Works Association have expressed a mutual interest in the creation of mutual aid plans to facilitate and encourage public works mutual aid between political subdivisions throughout California: and Whereas, the parties hereto have determined that it would be in their best interests to enter into an agreement that implements that plan and sets forth procedures and the responsibilities of the parties whenever emergency personnel, equipment and facility assistance is provided from one party's Public Works Department to the other; and Whereas no party should be in a position of depleting unreasonably its own resources, facilities, or services providing such mutual aid; and Whereas, such an agreement is in accord with the California Emergency Service Act set forth in Title 2, Division 1, Chapter 7 (Section 8550 et seq.) of the Government Code and specifically with Article 14 (Section 8630 et seq.) of the Act.

Now, therefore, in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree to provide mutual assistance to one another in times of emergency as follows:

AGREEMENT

This Agreement is made and entered into by public works agencies and private resources (that provide public works type services) that have, by executing this Agreement, manifested their intent to participate in an Intrastate Program for Mutual Aid and Assistance.

ARTICLE I. PURPOSE

Recognizing that emergencies may require assistance in the form of personnel, equipment, and supplies from outside the area of impact, the signatory public works agencies and private resources see a need to support each other in response using a pre-defined Mutual Aid and Assistance program. Through the Mutual Aid and Assistance Program, Members coordinate response activities and share resources during emergencies. This Agreement sets forth the procedures and standards for the administration of the Intrastate Mutual Aid and Assistance Program.

Note on Article I

Article I briefly describes why city and county public works agencies established a Program for Mutual Aid and Assistance and the purpose of the Agreement. Inclusion of this Article recognizes the spirit and intent of the Mutual Aid and Assistance Program.

ARTICLE II. DEFINITIONS

A. Agreement Coordinator - The County of San Mateo shall act as the initial Agreement Coordinator of this program for the purpose of receipt of new members to the agreement;

maintaining a current list of signatory parties and representatives; circulating annually a list of all parties and representatives to all signatory parties; and arranging for amendments to the agreement as may be necessary.

B. Authorized Official – An employee of a Member who is authorized by the Member's governing board or management to request assistance or offer assistance under this Agreement.

C. Coordinator - Means a person designated by each party to act on behalf of that party on all matters relative to mutual aid, to include but not be limited to requests, responses and reimbursement.

D. Emergency – Means the actual or threatened existence of an event that presents extreme peril to the safety of persons, environment or property within the limits of one of the parties caused by human or natural conditions such as fire, flood, storm, wind, earthquake, transportation accident, hazardous materials problem, tsunami, sudden or severe energy shortage, epidemic, civil disturbance, or other condition which is or is likely to be beyond the control of the services, personnel, equipment, and facilities of a party hereto and requires mutual aid or assistance.

E. Member – Any public works agency or private entity that provides public works type services that manifests intent to participate in the Mutual Aid and Assistance Program by executing this Agreement.

F. National Incident Management System (NIMS) - A national, standardized approach to incident management and response that sets uniform processes and procedures for emergency response operations.

G. Operational Area - For the coordination of public works mutual aid shall normally be by a county and all jurisdictions within the county that are parties to this Agreement.

H. Period of Assistance – A specified period of time when a Responding Member assists a Requesting Member. The period commences when personnel, equipment, or supplies depart from Responding Member's facility and ends when the resources return to their facility (portal to portal). All protections identified in the agreement apply during this period. The specified Period of Assistance may occur during response to or recovery from an emergency, as previously defined.

I. Requesting Member – A Member who requests assistance under the Mutual Aid and Assistance Program.

J. Responding Member – A Member that responds to a request for assistance under the Mutual Aid and Assistance Program.

Note on Article II

These terms and corresponding definitions are drawn from the existing Mutual Aid and Assistance agreements. Only the definition for emergency is noteworthy. The Model Agreement specifies a definition of an emergency that includes disasters that are "likely to be" beyond the control of the participating utility. As explained in the Note for Article V below, this permits a participating utility to request assistance prior to the onset of a disaster. The request for aid does NOT require a declaration of an emergency by the

local or state agencies, and the aid may be provided during the emergency response or recovery phases. This approach is consistent with the California and Washington Agreements but differs from the Florida and Texas Agreements, which limit requests for Mutual Aid and Assistance to post-disaster periods.

ARTICLE III. ADMINISTRATION

Coordinators designated by each party shall be designated by Title, Name, Address and Phone Number, and if said Coordinator changes, the other parties of the Agreement shall be notified in writing as soon as practical after the appointment has been made through the Agreement Coordinator designated.

Note on Article III

The Model Agreement conceptualizes a Mutual Aid and Assistance Program administered through the County.

ARTICLE IV. PROCEDURES

In coordination with the cities, county, emergency management and public health system a joint team of Coordinators shall develop operational and planning procedures for the Mutual Aid and Assistance Program. These procedures shall be updated at least annually. The Agreement Coordinator will call a meeting of city and county representatives annually.

Note on Article IV

Article IV recognizes that an agreement by itself may be insufficient to cover the range of issues that arise in Mutual Aid and Assistance Programs. To have an efficient Program, participating utilities may need to supplement the Mutual Aid and Assistance agreement with a Program guidance document that includes detailed operational and planning procedures.

ARTICLE V. REQUESTS FOR ASSISTANCE

Member Responsibility: Members shall identify an Authorized Official and alternates; provide contact information including 24-hour access; and maintain resource information made available by the utility for mutual aid and assistance response.

In the event of an Emergency, a Member's Authorized Official may request mutual aid and assistance from a participating Member. 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 participating Member. Specific protocols for requesting aid shall be provided in the required procedures (Article IV).

Response to a Request for Assistance – After a Member receives a request for assistance, the Authorized Official evaluates whether resources are available to respond to the request for assistance. Following the evaluation, the Authorized Representative shall inform, as soon as possible, the Requesting Member whether it has the resources to respond. If the Member is willing and able to provide assistance, the Member shall inform the Requesting Member about the type of available resources and the approximate arrival time of such assistance.

Discretion of Responding Member's Authorized Official – Execution of this Agreement does not create any duty to respond to a request for assistance. When a Member receives a request for assistance, the Authorized Official shall have absolute discretion as to the availability of resources of the official's agency. An Authorized Member's decisions on the availability of resources shall be final.

Note on Article V

1. The Model Agreement sets a low threshold for when Members can request mutual aid and assistance. Article V permits requests for mutual aid and assistance in the event of an "Emergency." An "Emergency" under Article II is defined as "an event that is, or is likely to be, beyond the control of the services, personnel, equipment, and facilities of a Mutual Aid and Assistance Program Member." This definition has two noteworthy characteristics. First, the use of the word "event", rather than "disaster", broadens the situations in which Members can request mutual aid and assistance. Second, an Emergency includes events that are "likely to be" beyond the control of the participating utility. By including the "is likely to be" language, participating utilities can request mutual aid and assistance before an event overwhelms their resources. This approach envisions situations where pre-event response would be necessary to protect human health and property.
2. Article V permits oral and written requests for assistance; however, when made orally, the requesting member must put the request in writing as soon as practicable. This approach balances the need to make a quick and prompt request with the need for accuracy.
3. The Model Agreement does not provide specific details on the type of information that must be provided when a participating utility requests assistance. This can be provided in the protocols that support the agreement. Article V only requires responding members to indicate what resources will be provided and when the resources will arrive at the requesting member's facility.
4. The Model Agreement provides participating utilities with absolute discretion when deciding whether to respond to a request for assistance.

ARTICLE VI. RESPONDING MEMBER PERSONNEL

National Incident Management System - When providing assistance under this Agreement, the Requesting and Responding Member shall be organized and shall function under the National Incident Management System.

Control - Responding Member personnel shall remain under the direction and control of the Responding Member. The Requesting Member's Authorized Official shall coordinate response activities with the designated supervisor(s) of the Responding Member(s). When ever practical, Responding Member personnel must be self sufficient for up to 72 hours, in that they will bring their food, equipment and arrangements for shelter, with them when they respond.

Food and Shelter – The Requesting Member shall supply reasonable food and shelter for Responding Member personnel. If the Requesting Member fails to provide food and shelter for Responding personnel, the Responding Member'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 that area. The Requesting Member remains responsible for reimbursing the Responding Member for all costs associated with providing food and shelter, if such resources are not provided.

Communication – The Requesting Member shall provide Responding Member 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. Status - Unless otherwise provided by law, the Responding Member’s officers and employees retain the same privileges, immunities, rights, duties and benefits as provided in their respective jurisdictions.

Licenses and Permits – To the extent permitted by law, Responding Member personnel that 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.

Right to Withdraw - The Responding Member’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 Member’s Authorized Official as soon as possible.

Note on Article VI

1. The National Incident Management System (NIMS) provides a consistent nationwide approach that allows federal, state, local and tribal governments as well as private sector and nongovernmental organizations to work together to manage incidents and disasters of all kinds. To be eligible federal emergency management assistance, water and wastewater mutual aid and assistance programs must meet NIMS standards for emergency preparedness and response.
2. The Model Agreement promotes “home” supervisory control over personnel. This approach recognizes that personnel will likely work better with their regular supervisors. To ensure an efficient response, Article VI requires responding member supervisors to coordinate with the requesting member’s authorized official.
3. Article VI requires the requesting member to supply food and shelter to responding member personnel. This may be too onerous given that the requesting member will be faced with an emergency when it makes a request for Mutual Aid and Assistance. Accordingly, Article VI permits the requesting member to reimburse the responding member for food and shelter costs rather than securing such provisions.
4. Article VI includes a provision that allows the responding member to withdraw some or all of its resources at anytime. This approach limits the commitment of the responding member. If a situation arose in the responding member’s facility, resources could be withdrawn as appropriate. The Model Agreement promotes assistance because participating utilities would be less likely to withhold resources out of concern that they could not respond to needs at their own facilities.
5. Licensing and permitting authority will most likely not be an issue for intrastate mutual aid. However, this Agreement is drafted to permit assistance under the Interstate Emergency Management Assistance Compact and an Interstate Mutual Aid and Assistance Program for water and wastewater utilities, if such a program were established (see Article XIX). Because state issued licensing and permitting credentials vary, it is important to clarify what actions and tasks responding member personnel can take when participating in interstate mutual aid and assistance. The licensing and permitting provision allows the maximum utilization of the professional skills held by responding member personnel. However, it does provide responding member personnel with authority to conduct activities or tasks that may only be completed by those holding locally issued professional credentials.

ARTICLE VII. COST- REIMBURSEMENT

Unless otherwise negotiated and executed by members, the Requesting Member shall reimburse the Responding Member for each of the following categories of costs incurred while providing aid and assistance during the specified Period of Assistance.

Personnel – Responding Member 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 Member designated supervisor(s) must keep accurate records of work performed by personnel during the specified Period of Assistance. Requesting Member reimbursement to the Responding Member must consider all personnel costs, including salaries or hourly wages, costs for fringe benefits, and indirect costs.

Equipment – The Requesting Member shall reimburse the Responding Member 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 or CalTRANS Schedule of Equipment Rates. 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.

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

Payment Period – The Responding Member must provide an itemized bill to the Requesting Member for all expenses it incurred as a result of providing assistance under this Agreement. The Requesting Member must send the itemized bill not later than (90) ninety days following the end of the Period of Assistance. The Requesting Member must pay the bill in full on or before the forty-fifth (45th) day following the billing date. Unpaid bills become delinquent upon the forty-sixth (46th) day following the billing date, and, once delinquent, the bill accrues interest at the rate of prime, as reported by the Wall Street Journal, plus two (2%) per annum.

Note on Article VII

1. Mutual Aid programs established in the 1950s did not have cost reimbursement procedures. Rather, program members would provide assistance at no charge, with the understanding that assistance would be provided to them when they were in need. For those utilities that wish to abide by that principle, the initial statement of Article VII allows the requesting and responding member to determine which resources could be exchanged without cost. Because public resources cannot normally be provided to private organizations, this process is appropriate only when the assistance is exchanged between public utilities.
2. For those utilities that seek reimbursement for services, Article VII reflects the cost reimbursement procedures set forth in the four existing water and wastewater agreements for Mutual Aid and Assistance. To qualify for FEMA cost-reimbursement, this Article must be included in a mutual aid agreement.
3. In general, private organizations cannot receive public funds. However, public funds can be used to reimburse private organizations for costs incurred as a result of providing assistance to a public entity as long as the costs are identified and there is a written agreement. Accordingly, Article VII requires an itemized bill for all expenses incurred during a Period of Assistance.
4. The Model Agreement suggests procedures include a penalty provision for unpaid bills. Providing a penalty provision will promote timely reimbursement to the requesting member.

ARTICLE VIII.
DISPUTES

Any controversy or claim arising out of, or relating to, this Agreement, including, but not limited to, alleged breach of the Agreement, shall be subject to mediation by a mediator who is selected by the parties.

Note on Article VIII

Article VIII sets forth a two-tiered process for handling disputes. First, members must try negotiation. If unsuccessful, then the matter must be resolved through mediation.

ARTICLE IX.
REQUESTING MEMBER'S DUTY TO INDEMNIFY

The Requesting Member shall assume the defense of, fully indemnify and hold harmless, the Responding Member, its officers and employees, from all claims, loss, damage, injury and liability of every kind, nature and description, directly or indirectly arising from Responding Member's work during a specified Period of Assistance. The scope of the Requesting Member's duty 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.

The Requesting Member's duty to indemnify is subject to, and shall be applied consistent with, the conditions set forth in Article X.

Note on Article IX

1. Article IX sets forth a comprehensive indemnity provision. The provision requires the requesting member to indemnify responding members, and their officers and, employees. This requirement protects responding members from the costs associated with civil suits that arise from, or a related to, providing Mutual Aid and Assistance. The Model Agreement allows an indemnity provision that would encourage participating utilities to provide assistance in the event of an emergency.
2. However, it is important to recognize that Article IX places an added burden on members that request assistance. The duty to indemnify, along with other requesting member obligations set forth in the Model Agreement, may deter participating utilities from utilizing the Mutual Aid and Assistance Program.

ARTICLE X.
SIGNATORY INDEMNIFICATION

In the event of a liability, claim, demand, action, or proceeding of whatever kind or nature arising out of a specified Period of Assistance, the Members who receive and provide assistance shall indemnify and hold harmless those Members whose involvement in the transaction or occurrence that is the subject of such claim, action, demand or other proceeding is limited to execution of this Agreement.

Note on Article X

A lawsuit or similar action that arises from or is related to a Mutual Aid and Assistance response may name all participating utilities as defendants regardless of their involvement in the transaction or occurrence that gave rise to the suit. Article X protects non-responding members from costs associated lawsuits or similar actions. This protection would encourage participation in the Mutual Aid and Assistance Program. Water and wastewater utilities would not incur additional liability by participating in the Mutual Aid and Assistance Program.

ARTICLE XI.
WORKERS' COMPENSATION CLAIMS

The Responding Member is responsible for providing workers' compensation benefits and administering workers' compensation for responding member's employees. The Requesting Member shall reimburse Responding Member for all costs, benefits, and expenses associated with workers' compensation and other claims that arise from or are related to providing assistance to responding member under this Agreement. Reimbursement shall be made on a quarterly basis, or on other terms mutually agreed upon, by the Requesting Member and Responding Member.

Note on Article XI

Responding member personnel will effectively be working for the requesting member during a period of assistance. Accordingly, Article XI provides that the requesting member is responsible for workers' compensation claims filed by responding member personnel if such claims arise from or are related to providing assistance to the requesting member under the Mutual Aid and Assistance Program.

ARTICLE XII.
NOTICE

A Member who becomes aware of a claim or suit that in anyway, directly or indirectly, contingently or otherwise, affects or might affect other Members of this Agreement shall provide prompt and timely notice to the Members who may be affected by the suit or claim. Each Member reserves the right to participate in the defense of such claims or suits as necessary to protect its own interests.

Note on Article XII

Article XII recognizes that Members of the Agreement need to know about claims or suits that affect, or might affect, them. The Article also preserves the right of a Member to defend itself in any claim or suit that affects its interests.

ARTICLE XIII.
INSURANCE

Members of this Agreement shall maintain an insurance policy, or self-insurance, or a combination of self-insurance and insurance that covers activities that it may undertake by virtue of membership in the Mutual Aid and Assistance Program. The scope of the coverage must include, at minimum, coverage for employee faulty workmanship and other negligent acts, errors or omissions, and coverage for meeting the indemnity conditions provided in Articles IX and X.

Note on Article XIII

1. Article XIII requires members to carry insurance to protect against risks associated with participation in the Mutual Aid and Assistance Program. This provision provides a secure means of covering risks associated with participation in the Mutual Aid and Assistance Program.
2. A requirement to carry insurance could be alternative to the indemnity provisions provided in Articles IX and X. That is, rather than place the burden on the requesting member to indemnify the responding member; the mutual aid and assistance agreement could provide that all members bear the risks of their own actions.

ARTICLE XIV.
EFFECTIVE DATE

This Agreement shall be effective after the public works agency and private resources that provide public works services' authorized representative executes the Agreement and the Agreement Coordinator receives the Agreement, and remain in effect until terminated. The Agreement Coordinator shall maintain a list of all Members.

Note on Article XIV

Article XIV provides a standard approach on the process for participation in the Mutual Aid and Assistance Program.

ARTICLE XV.
WITHDRAWAL

A Member may withdraw from this Agreement by providing written notice of its intent to withdraw to the Agreement Coordinator. Withdrawal takes effect 60 days after the appropriate officials receive notice.

Note on Article XV

Article XV recognizes that a Member may decide to withdraw from Mutual Aid and Assistance Program.

ARTICLE XVI.
MODIFICATION

No provision of this Agreement may be modified, altered or rescinded by individual parties to the Agreement. Modifications to this Agreement may be due to programmatic operational changes to support the agreement, legislative action, or other developments. Approved modifications take effect 60 days after the date upon which notice is sent to the Members.

Note on Article XVI

Article XVI recognizes that members may want to modify the Program agreement. There may also be circumstances that require modification of the Program agreement. For example, creation of an interstate public works agency and private resources that provide public works services Mutual Aid and Assistance Program would like require agreement modifications.

ARTICLE XVII.
PRIOR AGREEMENTS

This Agreement supersedes all prior Agreements between Members to the extent that such prior Agreements are inconsistent with this Agreement.

Note on Article XVII

Members of the Mutual Aid and Assistance Program may already have assistance agreements in place with utilities. XVII ensures that existing assistance agreements do not interfere with the operation of the intrastate Mutual Aid and Assistance Program.

ARTICLE XVII.
PRIOR AGREEMENTS

This Agreement supersedes all prior Agreements between Members to the extent that such prior Agreements are inconsistent with this Agreement.

Note on Article XVII

Members of the Mutual Aid and Assistance Program may already have assistance agreements in place with utilities. XVII ensures that existing assistance agreements do not interfere with the operation of the intrastate Mutual Aid and Assistance Program.

ARTICLE XVIII.
PROHIBITION ON THIRD PARTIES AND ASSIGNMENT OF RIGHTS/DUTIES

This Agreement is for the sole benefit of the Members and no person or entity must 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.

Note on Article XVIII

Article XVII covers issues of contract law that may interfere with the operation of the Mutual Aid and

Assistance Program. The prohibition on third-party beneficiaries limits all rights and benefits under the agreement to participating utilities. Thus, a local government could not assert rights under this agreement as a third-party beneficiary. Article XVII also prohibits the assignment of benefits created by the agreement to third parties. In other words, a participating utility could not assign its ability to request mutual aid and assistance to a non-participating utility. Prohibiting the delegation of duties ensures that only the participating utilities are involved in the Mutual Aid and Assistance Program.

Now, therefore, in consideration of the covenants and obligations set forth in this Agreement, with the County and Cities, manifests its intent to be a Member of the Mutual Aid and Assistance Program by executing this Agreement on this _____ day of _____ 2006.

County of San Mateo

Authorized Agent

Printed Name

Jerry Hill, President, Board of Supervisors, County of San Mateo
Title

Date

Town of Atherton

Authorized Agent

Printed Name

Title

Date

City of Brisbane

Authorized Agent

Printed Name

Title

Date

Town of Colma

Authorized Agent

Printed Name

Title

Date

City of Belmont

Authorized Agent

Printed Name

Title

Date

City of Burlingame

Authorized Agent

Printed Name

Title

Date

City of Daly City

Authorized Agent

Printed Name

Title

Date

City of East Palo Alto

Authorized Agent

Printed Name

Title

Date

City of Foster City

Authorized Agent

Printed Name

Title

Date

City of Half Moon Bay

Authorized Agent

Printed Name

Title

Date

Town of Hillsborough

Authorized Agent

Printed Name

Title

Date

City of Menlo Park

Authorized Agent

Printed Name

Title

Date

City of Millbrae

Authorized Agent

Printed Name

Title

Date

City of Pacifica

Authorized Agent

Printed Name

Title

Date

City of Redwood City

Authorized Agent

Printed Name

Title

Date

Town of Portola Valley

Authorized Agent

Printed Name

Title

Date

City of San Bruno

Authorized Agent

Printed Name

Title

Date

City of San Carlos

Authorized Agent

Printed Name

Title

Date

City of San Mateo

Authorized Agent

Printed Name

Title

Date

City of South San Francisco

Town of Woodside

Authorized Agent

Authorized Agent

Printed Name

Printed Name

Title

Title

Date

Date