

Introduced by: Councilmember Smith

CITY OF TAKOMA PARK, MARYLAND

**RESOLUTION 2013-34
AUTHORIZING THE ADOPTION OF A
PUBLIC WORKS MUTUAL AID AGREEMENT**

- WHEREAS,** the Federal Government, by virtue of the Federal Department of Homeland Security through its Federal Emergency Management Agency, has recommended and actively encourages the formation of mutual aid agreements between local jurisdictions and/or taxing districts for reciprocal disaster response and recovery assistance; and
- WHEREAS,** the State of Maryland, by virtue of directives from the Governor through the Maryland Emergency Management Agency and the State of Maryland Core Plan for Emergency Operations has fully endorsed the formation and execution of such mutual aid arrangements between public agencies and political subdivisions within the State; and
- WHEREAS,** in the case of an emergency or disaster that exceeds the resources of the City's Public Works Department it is often desirable and necessary to request additional public works personnel, equipment and/or material from other jurisdictions; and
- WHEREAS,** in the case of an emergency or disaster that exceeds the resources of another municipality's Public Works Department it is often desirable and appropriate that the City provide public works personnel, equipment and/or material assistance to that municipality; and
- WHEREAS,** the City Council recognizes that such an emergency or disaster is likely to arise and desire to agree in advance to a system of mutual aid and assistance to meet such a situation, and at the same time to allocate risk and responsibility; and
- WHEREAS,** it is in the public interest to enhance; foster and maintain a positive working relationship with other local governments as part of the City's emergency management plan.
- WHEREAS,** the Maryland Municipal Public Works Association has developed an agreement for the purpose of establishing a mutual aid and assistance plan, a copy of which is attached; and
- WHEREAS,** the City Council has determined that it is in the public interest that the City enters into such an agreement.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Takoma Park that the City shall enter into a Public Works Mutual Aid Agreement in substantially the form attached, and that the City Manager is hereby authorized to sign said Agreement.

ADOPTED, by the Council of the City of Takoma Park, Maryland at a regular meeting on June 10, 2013 and effective on the 11th day of June, 2013.

ATTEST:

Jessie Carpenter, CMC
City Clerk

**THE MARYLAND MUNICIPAL PUBLIC WORKS ASSOCIATION
PUBLIC WORKS MUTUAL AID AGREEMENT**

THIS AGREEMENT is entered into this _____ day of _____ 20___, by and between the undersigned municipalities, hereinafter collectively referred to as the “municipalities” or the “Parties.”

WHEREAS, the staff of the Department of Public Works of the Parties are charged with providing public work services to the residents within their respective jurisdictions; and

WHEREAS, the Federal Government, by virtue of the Federal Department of Homeland Security through its Federal Emergency Management Agency, has recommended and actively encourages the formation of mutual aid agreements between local jurisdictions and/or taxing districts for reciprocal disaster response and recovery assistance; and

WHEREAS, the State of Maryland, by virtue of directives from the Governor through the Maryland Emergency Management Agency and the State of Maryland Core Plan for Emergency Operations, has fully endorsed the formation and execution of such mutual aid arrangements between public agencies and political subdivisions within the State; and

WHEREAS, in the case of an emergency or disaster arising within the jurisdictional limits of a signatory municipality hereto, it is often desirable and necessary to require additional public works personnel, equipment and/or material, beyond that which each individual public works department is able to furnish from its own resources, to combat such an emergency or disaster; and

WHEREAS, the signatory municipalities hereto recognize that such an emergency or disaster is likely to arise and desire to agree in advance to a system of mutual aid and assistance to meet such a situation, and at the same time to allocate risk and responsibility among themselves; and

WHEREAS, it is the mutual desire of each of these municipalities to enhance, foster and maintain the positive working relationship currently existing between them.

NOW THEREFORE, in consideration of the foregoing premises and other covenants and conditions herein contained, the adequacy and sufficiency of which is hereby acknowledged, the Parties, by their undersigned officials, do hereby agree as follows:

ARTICLE I – DEFINITIONS

- 1. REQUESTING PUBLIC WORKS DEPARTMENT** – This term shall collectively refer to the Party, its authorized agents, employees, volunteers, officers, representatives, and servants which requests or requires additional public works resources to combat an emergency or disaster within its jurisdictional limits.
- 2. RESPONDING PUBLIC WORKS DEPARTMENT** – This term shall collectively refer to the Party, its authorized agents, employees, volunteers, officers, representatives and servants from whom aid or assistance is requested.
- 3. PUBLIC WORKS RESOURCES** – This term shall refer to any personnel, equipment, or material, employed or owned by the political subdivision or public agency, used in the performance of public works activities.

4. **DISASTER** – This term shall mean an occurrence or threat of widespread or severe damage, injury or loss of life or property resulting from any natural, technological or manmade cause, including but not limited to fire, flood, earthquake, wind, storm, hazardous materials spill or water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, extended periods of severe and inclement weather, drought, infestation, critical shortages of essential fuels and energy, explosion, riot or hostile military or paramilitary action.
5. **EMERGENCY** – This term shall refer to any situation that requires immediate response by the jurisdiction's first response departments or agencies to save lives, protect property and public health, or to lessen or avert the threat of a disaster. This includes but is not limited to a major disaster or emergency declared by the President, a state of emergency declared by the Governor of the State of Maryland, or the declaration of a local emergency by the chief operating officer of a municipality, or their designees.

ARTICLE II – SCOPE OF AGREEMENT

1. The Governor of Maryland's Homeland Security Declaration #5 (HSD5) provides, in part, that the governing body of any municipality may enter into reciprocal agreements in order to establish and carry into effect a plan to provide mutual aid through furnishing of the services of its public works staff together with all necessary equipment in the event of an emergency, disaster or terrorist threat situation as provided in the Federal Homeland Security Act of 2002, Presidential Directives HSPD 2 through HSPD 12 and the Governor of Maryland's Homeland Security Directive #2 (HSD2). Article 23A, Section 8C, of the Annotated Code of Maryland also authorizes municipal corporations in Maryland to lend or provide the use of tools, vehicles, implements, materials, consultants, services and other assistance to another political subdivision for public purposes that are of benefit to the municipal corporation and the other political subdivision.
2. Pursuant to authorities stated in Article II, Section 1, above, the undersigned, as the governing bodies, have determined by their adoption of this Agreement that when an emergency or disaster situation exists and the Department of Public Works for any or all of the Parties, shall have committed, or shall foresee the need to commit, all of their readily available resources to provide reasonable and responsive action to any present or future incident or event, the mutual aid provided herein may be utilized.

ARTICLE III – JURISDICTION

1. In the event of an emergency or disaster, public works staff from the responding public works agencies shall take operational direction from the senior public works official, or his or her designee, of the requesting jurisdiction through the designated representatives of the responding agencies while operating within the jurisdictions of any other signatory municipality.
2. Mutual aid may be provided under this Agreement when an emergency or disaster situation arises and the public works department of a signatory municipality shall have committed, or shall foresee the need to commit, all of its readily available resources to any present or future incident or event.

ARTICLE IV – AUTHORITY

1. Pursuant to the legislative action approving this Agreement the undersigned, as the governing bodies, as confirmed by the Municipal Resolutions or Ordinances attached hereto, and in accordance with the Governor of Maryland’s Homeland Security Directive #5 (HSD5) and Article 23A, Section 8C, of the Annotated Code of Maryland, and by the execution of this Agreement, the public works staff of each signatory municipality shall comply with the following procedures with respect to public works operations and actions within the jurisdiction of any other signatory municipality during an emergency or disaster situation.
2. All calls for service concerning emergency or disaster situations having occurred or presently occurring within the jurisdiction of a public works department of a signatory municipality shall be referred to that department.
3. Pursuant to the terms of this Agreement, public works staff of the public works department of any signatory municipality will function in their normal work descriptions and capacities within the jurisdiction of the public works department of any other signatory municipality in emergency or disaster situations. The designated senior public works officials of the responding public works departments will coordinate with the senior public works official of the requesting public works department to ensure that appropriate and available staff, equipment and/or material is rendered for the most effective recovery from the emergency or disaster.
4. The requesting public works department shall make a joint request for reimbursement on behalf of itself and all responding public works departments, when appropriate, to County, State, Federal or private agencies under a declaration of a State of Emergency or when otherwise available. All documentation required for incident management and reimbursement shall be done in the format, manner and timeliness prescribed by the requesting public works department.
5. Pursuant to the terms of this Agreement, no public works staff of the public works department of a signatory municipality shall engage in any operations or service provision within the boundaries of any other signatory municipality not associated directly with the emergency or disaster for which assistance has been requested. Each public works department must forward copies of any documentation regarding staff, equipment or materials used, or caused to be used, within the jurisdiction of any other signatory municipality to the public works department of that municipality in accordance with the reporting provisions of Article IV, Section 4 of this Agreement.
6. The requesting public works department shall attempt to use direct radio communications with the responding public works department or departments, if the technology exists and is operational. In the absence of direct radio communications, responding public works staff shall communicate directly with their respective communications centers that in turn shall communicate directly with the requesting public works department’s communication center.

ARTICLE V – USE OF RESOURCES

1. Pursuant to the terms of this Agreement, the senior, on-duty public works official of a public works department of a signatory municipality in charge of any emergency or disaster

situation within that jurisdiction is authorized to determine the need for additional public works resources in an emergency or disaster.

2. Once the determination of the need for additional public works resources has been made, said official may request from the senior on-duty public works official of any other public works department of a signatory municipality such resources as may be necessary and available to meet the need. Whenever possible, this request shall be in writing.
3. Pursuant to the terms of this Agreement, the Public Works Director or designee of any public works department of a signatory municipality may determine the need for additional public works resources as may be necessary for any future emergency or disaster situation within that jurisdiction.
4. Once the determination of the need for additional public works resources as may be necessary to address any future emergency or disaster situation has been made, said official may request from the Public Works Director of any other signatory public works department such resources as may be necessary and available to meet that anticipated future need. This request shall be in writing.
5. When a request for aid is made under this Agreement, the Public Works Directors of the responding public works departments of signatory municipalities have the responsibility, the terms of this Agreement notwithstanding, to determine the extent of aid available from their departmental resources which are not required for adequate protection or regular day-to-day operations of their own jurisdictions.
6. In the event that a request for additional public works resources is made pursuant to Article V, Sections 2 or 4 of this Agreement, the following procedures shall be followed:
 - a. All requests for resources shall include:
 1. The name and position of the public works official making the request,
 2. The nature and location of the emergency or disaster,
 3. The number and type(s) of personnel requested,
 4. The type(s) of equipment and/or material needed, and
 5. The name, title, and location of the public works official to whom assisting personnel shall report.
 - b. The public works official receiving such a request shall communicate the request immediately to that official's Public Works Director or designee, who shall consider the circumstances of the request and the capability of the Director's department to provide the requested assistance. If the Public Works Director determines that the request can be met, the Director shall provide such assistance, including necessary personnel, equipment and/or material, as is consistent with the request, and shall promptly notify the requestor of the number of personnel, and the amount and type of equipment and/or material being provided.
 - c. If a Public Works Director or designee who receives a request determines that the request cannot be met, the Director has the absolute right to refuse any public works assistance to the requesting department consistent with the responding department's primary responsibility of providing emergency assistance and routine day to day operations to the responding department's own jurisdiction. Such decision shall be final.

- d. Nothing contained herein shall be construed to impose a duty on the public works department of any signatory municipality, its staff, employees or agents, to provide public works resources to a requesting public works department under the terms of this Agreement, and no liability shall attach for a failure to do so. In addition, once public works resources have been provided, no liability shall attach for withdrawing such resources, or portions thereof, which withdrawal shall be in the sole and unfettered discretion of the responding public works department.
 - e. Subject to Article IV of this Agreement, assisting personnel from the responding public works department, together with their equipment and/or materials, shall be under the sole control and direction of the responding public works department. The responding public works department shall designate a representative on the scene to exercise that control and direction including the absolute discretionary right to remove such resources from the emergency or disaster site at any time, but shall not so withdraw the aid without first orally notifying the requesting public works department. All operational directives issued by the requesting public works department on the scene of the emergency or disaster shall be communicated through the responding public works departments' designated representatives.
 - f. The use, deployment, direction and control of resources under this section shall generally conform to the applicable related sections for the most current version of State of Maryland Core Plan for Emergency Operations.
7. No public works department of a signatory municipality shall send any personnel or other assistance to an incident or event in another signatory municipality unless it is expressly requested pursuant to this Agreement.
8. The public works department of each signatory municipality shall maintain an up-to-date list of available personnel, equipment and material resources which shall be attached as an appendix to this Agreement.

ARTICLE VI – MISCELLANEOUS PROVISIONS

- 1. Notwithstanding the provision of this Agreement, nothing herein shall prevent the Public Works Directors of each of the Parties from mutually agreeing upon such operational arrangements or establishing such procedures as may be necessary to carry out the intent of this Agreement.
- 2. The public works department of any Party, upon receiving any written complaint against its personnel from any other signatory municipality for failure to comply with this Agreement, shall take the necessary action to ensure compliance and, where appropriate, to notify the initiator of the complaint of any action taken as a result of such complaint.
- 3. A central file shall be maintained by each public works department documenting all actions taken within any other signatory municipality's jurisdiction. The Public Works Directors for the Parties shall meet at least once annually to review actions taken under this Agreement and make such recommendations as may be authorized by their respective municipalities required to advance the goals of this Agreement in accordance with applicable directives, regulations and laws.

4. Each public works department of each signatory municipality shall provide the others with sufficient copies of all manuals, directives, memoranda, training bulletins and any other materials necessary to assist the public works staff of each department in the delivery of its public works services and preparation of written reports pursuant to the terms of this Agreement. All such materials should be updated with necessary to keep the other public works agencies informed of changes in procedure.
5. Each signatory municipality to this Agreement:
 - a. Assumes responsibility and liability for the acts and omissions of that municipality's public works staff, agents and employees when acting as a requesting public works department or a responding public works department under this Agreement, and, except in the case of gross negligence or intentionally wrongful conduct, waives any and all claims against all other signatory municipality to this Agreement for injury or death to persons or damage to property which may arise out of the activities of any of the public works staff, agents and employees of signatory municipality under this Agreement.
 - b. Agrees to indemnify and save harmless the other signatory municipality to this Agreement, and their respective officials, employees and agents, from all claims by third parties for property damage or injury or death to persons which may arise out of the activities of that municipality's public works department's staff, employees and agents; provided, however, that the municipality need not save harmless and indemnify the another signatory municipality if (1) the other municipality or its public works department does not cooperate in defending against claims by third parties, or (2) the third party claims arise out of the grossly negligent or intentionally wrongful act or omission of the other municipality's staff, employees or agents. The provisions of this Article VI, Section 5.b shall in no way be construed to constitute a waiver of any immunity or defense to which any municipality or person may be entitled or enjoy or to the protections of §5-301, *et seq*, of the Local Government Tort Claims Act, Courts and Judicial Proceedings Article of the Annotated Code of Maryland.
 - c. Shall make no claims for expenditure regarding any actions taken or services received pursuant to this Agreement against any other signatory municipality, except where a joint request for reimbursement is made to County, State, Federal or private agencies under a declaration of a State of Emergency.
6. The signatory municipalities acknowledge that their public works staff, agents and employees, when acting pursuant to the authority of this Agreement beyond the territorial limits of the municipality in which they are appointed or employed, at all times remain employees or agents of the municipality in which they are appointed or employed, and are entitled to all applicable immunities from liability and exemptions from laws, ordinances, and regulations and are entitled to worker's compensation, disability, death benefits, life insurance, pension, and other benefits enjoyed by them while performing their respective duties within the territorial limits of the municipality in which they are appointed or employed.

ARTICLE VII – EFFECTIVENESS

This Agreement shall be in full force and effect upon receipt of a copy of: (1) the resolutions or ordinances adopted by the respective governing bodies authorizing participation in this Agreement, and; (2) a copy of the signature page containing the duly

authorized signatures of the named municipal officials thereon. Additional municipalities may become Parties to this Agreement upon receipt of a copy of: (1) the resolutions or ordinances adopted by their respective governing bodies authorizing participation in this Agreement, and; (2) a copy of the signature page containing the duly authorized signatures of the named municipal officials thereon.

ARTICLE VIII – TERMINATION

1. This Agreement shall be in effect for a term of one (1) year from the date of signature hereof and shall automatically renew for successive one (1) year terms unless terminated in accordance with this Section.
2. Any signatory municipality may terminate and withdraw from this Agreement at any time, at its option, by resolution of its governing body.
3. Copies of such resolution terminating and withdrawing from this Agreement shall be provided to the remaining signatory municipalities within thirty (30) business days of its passage and approval.

IN WITNESS WHEREOF, this Agreement has been duly executed by the following parties:

**MUNICIPALITY
City of Takoma Park, Maryland**

_____ (SEAL)

Witness

Print Name: Brian T. Kenner

Title: City Manager

APPROVED:

Daryl Braithwaite
Director, Department of Public Works
City of Takoma Park