



Item: Mutual Aid Agreement for Water and Wastewater Utilities
From: Public Works Department/Water Utility
Initiated By: Public Works Department/Water Utility
Presented By: Jim Rearden, Public Works Director
Action Requested: Enter into Mutual Aid Agreement

Suggested Motion:

1. Commissioner moves:

“I move the City Commission approve the Mutual Aid and Assistance Agreement for Water and Wastewater Utilities and authorize the City Manager to execute the agreement.”

2. Mayor calls for a second, discussion, and calls for the vote.

Staff Recommendation: Enter into the Mutual Aid Agreement

Background:

The proposed agreement is part of a national effort funded by the Environmental Protection Agency and coordinated by the American Waterworks Association to establish mutual aid agreements in every state between water agencies, both public and private. Water/Wastewater Agency Response Networks, or WARNs, are volunteer-based, utility-to-utility networks that prepare for disasters, then help member-utilities respond and recover by getting specialized utility resources – personnel and equipment – when and where they’re needed. WARNs compliment existing state and local emergency management programs and work within the National Incident Management System structure for intrastate aid. Interstate aid is facilitated by the nationally adopted Emergency Management Assistance Compact in coordination with the Federal Emergency Response Agency’s National Response Framework. There are forty states that currently have active WARNs. Montana’s WARN is not yet active.

Significant Impacts

The proposed agreement will facilitate emergency response for the City’s water and wastewater utilities. It also provides the ability for the City to respond to other utilities upon request. Under the agreement, the City does not have an obligation to respond and has the ability to recall resources that have been dispatched to assist other utilities without liability. Should the City choose to respond, it will maintain control of its resources and can require reimbursement. There is no cost to participate in Montana’s WARN.

Citizen Participation

Not Applicable.

Workload Impacts

The City would be required to assign an Authorized agent to request assistance and respond to other's requests as well as provide and maintain a list of resources the City has available. This person or a designee would be required to attend an annual meeting held in Montana.

Purpose

To enable the City to provide and accept mutual aid under the Water/Wastewater Agency Response Network model.

Project Work Scope

Not applicable.

Evaluation and Selection Process

Not applicable.

Conclusion

Staff recommends that the City enter into this mutual aid agreement.

Concurrences:

The City Attorney has reviewed the proposed agreement and has no objections.

Fiscal Impact:

There is no cost to participate in this agreement. A City representative will be expected to participate in one annual meeting held somewhere in Montana.

Alternatives:

The City could choose not to participate in this mutual aid agreement.

Attachments/Exhibits:

- Mutual Aid and Assistance Agreement for Intrastate Water/Wastewater Agency Response Network for the State of Montana (MTWARN)

1 **Mutual Aid and Assistance Agreement for Intrastate**
2 **Water/Wastewater Agency Response Network for the State**
3 **Of Montana (MTWARN)**

4
5 **AGREEMENT**
6

7 This Agreement is made and entered into by public and private Water and Wastewater Utilities
8 that have, by executing this Agreement, manifested their intent to participate in an Intrastate
9 Program for Mutual Aid and Assistance.

10
11 Statutory Authority – This Agreement is authorized under State law including but not limited to
12 Title 7, Chapter 11, Part 1 of Montana Code Annotated which allows utilities to cooperate with
13 other utilities and Title 10, Chapter 3, Part 9 of Montana Code Annotated which establishes an
14 intrastate mutual aid system.

15
16 **ARTICLE I.**
17 **PURPOSE**
18

19 Recognizing that emergencies may require aid or assistance in the form of personnel,
20 equipment, and supplies from outside the area of impact, the signatory utilities hereby establish
21 an Intrastate Program for Mutual Aid and Assistance. Through the Mutual Aid and Assistance
22 Program, Members coordinate response activities and share resources during emergencies.
23 This Agreement sets forth the procedures and standards for the administration of the Intrastate
24 Mutual Aid and Assistance Program.

25
26 **ARTICLE II.**
27 **DEFINITIONS**
28

- 29 A. Authorized Official – An employee or officer of a Member utility that is authorized to:
30 1. Request assistance;
31 2. Offer assistance;
32 3. Refuse to offer assistance or
33 4. Withdraw assistance under this agreement.
34
- 35 B. Emergency – A natural or human caused event or circumstance causing, or imminently
36 threatening to cause, loss of life, injury to person or property, threats to public health and
37 safety, human suffering or financial loss, and includes, but is not limited to, fire, explosion,
38 flood, severe weather, drought, earthquake, volcanic activity, spills or releases of oil or
39 hazardous material, contamination, utility or transportation emergencies, disease, blight,
40 infestation, civil disturbance, riot, intentional acts, sabotage and war that is, or could
41 reasonably be beyond the capability of the services, personnel, equipment, and facilities of a
42 Mutual Aid and Assistance Program Member to fully manage and mitigate internally.
43
- 44 C. Members – Members of MTWARN shall be as defined below:
45 1. Utility Member – Any Water or Wastewater Utility be it a municipal corporation, quasi-
46 municipal corporation, department or agency of a municipal corporation, department or
47 agency of a quasi-municipal corporation, service district, political subdivision or private
48 utility company that manifests intent to participate in the Mutual Aid and Assistance
49 Program by executing this Agreement. Utility Members may be Public, Private or Tribal
50 entities.
51

- 1 2. Associate Member – An organization, municipal corporation, quasi-municipal
2 corporation, agency, or private group that is not a water or wastewater system, but
3 provides services to the water and wastewater industry be it advise, service, donation
4 grant, or support to the MTWARN efforts that do not officially sign this agreement.
5 Organizations wishing to become Associate Members shall petition to the Chairman and
6 be approved by majority vote of the Committee.
7
- 8 3. Requesting Member – A Member who requests aid or assistance under the Mutual Aid
9 and Assistance Program.
10
- 11 4. Responding Member – A Member that responds to a request for aid or assistance under
12 the Mutual Aid and Assistance Program.
13
- 14 5. Non-Responding Member - A Member or Associate Member that does not provide aid or
15 assistance during a Period of Assistance under the Mutual Aid and Assistance Program.
16
- 17 D. Confidential Information - Any document considered under State law to be eligible for
18 confidential status, shared with any signatory of this Agreement that is marked confidential,
19 including but not limited to any map, report, notes, papers, opinion, or e-mail which relates
20 to the system vulnerabilities of a Member or Associate Member. It is recognized by
21 signatories of this agreement that State law does not generally allow these types of
22 documents to be considered confidential if they are owned by a public agency. See
23 “Sensitive information”.
24
- 25 E. Period of Assistance – A specified period of time when a Responding Member assists a
26 Requesting Member. The period commences when personnel, equipment, or supplies
27 depart from Responding Member’s facility and ends when the resources return to their
28 facility (portal to portal). All protections identified in the agreement apply during this period.
29 The specified Period of Assistance may occur during response to or recovery from an
30 emergency, as previously defined.
31
- 32 F. National Incident Management System (NIMS): A national, standardized approach to
33 incident management and response that sets uniform processes and procedures for
34 emergency response operations.
35
- 36 G. Sensitive Information – Any document not considered under State law to be eligible for
37 confidential status, shared with any signatory of this Agreeemnt that is marked sensitive,
38 including but not limited to any map, report, notes, papers, opinion, or e-mail which relates
39 to the system vulnerabilities of a Member or Associate Member.
40

41 **ARTICLE III.**
42 **ADMINISTRATION**
43

44 The Mutual Aid and Assistance Program shall be administered through a Statewide Committee.
45 The Committee, under the leadership of an elected Chairperson, shall meet at least annually to
46 address Mutual Aid and Assistance Program issues. The Committee shall also meet at least
47 annually to review emergency preparedness and response procedures. In addition to
48 representing the interests of the Members, the Committee may include representatives from MT
49 Department of Environmental Quality, Montana Section American Water Works Association,
50 Montana Rural Water Systems, Montana Water Environment Association, Midwest Assistance
51 Program, Montana Association of Water and Sewer Systems and similar organizations as

1 outlined in the MTWARN Bylaws. Under the leadership of the Chair, the Committee members
2 shall plan and coordinate emergency planning and response activities for the Mutual Aid and
3 Assistance Program.

4
5 **ARTICLE IV.**
6 **PROCEDURES**

7
8 In coordination with emergency management and public health system of the state, the
9 Committee shall develop operational and planning procedures for the Mutual Aid and
10 Assistance Program. These procedures shall be reviewed at least annually and updated as
11 needed.

12
13 **ARTICLE V.**
14 **REQUESTS FOR ASSISTANCE**

15
16 A. Member Responsibility: Members shall identify an Authorized Official and alternates;
17 provide contact information including 24-hour access and maintain resource information that
18 may be available from the utility for mutual aid and assistance response. Such contact
19 information shall be updated annually or when changes occur and provided to the
20 Committee.

21
22 In the event of an Emergency, a Member's Authorized Official may request mutual aid and
23 assistance from a participating Member. Requests for assistance can be made orally or in
24 writing. When made orally, the request for personnel, equipment, and supplies shall be
25 prepared in writing as soon as practicable. Requests for assistance shall be directed to the
26 Authorized Official of the participating Member. Specific protocols for requesting aid shall
27 be provided in the required procedures (Article IV).

28
29 B. Response to a Request for Assistance – Members are not obligated to respond to a request.
30 After a Member receives a request for assistance, the Authorized Official evaluates whether
31 to respond, whether resources are available to respond, or if other circumstances would
32 hinder response. Following the evaluation, the Authorized Official shall inform, as soon as
33 possible, the Requesting Member whether it will respond. If the Member is willing and able
34 to provide assistance, the Member shall inform the Requesting Member about the type of
35 available resources and the approximate arrival time of such assistance.

36
37 C. Discretion of Responding Member's Authorized Official – Execution of this Agreement does
38 not create any duty to respond to a request for assistance. When a Member receives a
39 request for assistance, the Authorized Official shall have sole and absolute discretion as to
40 whether to respond, or the availability of resources to be used in such response. An
41 Authorized Member's decisions on the availability of resources shall be final and under no
42 circumstances constitute grounds for any claim of any nature against a Member.

43
44 **ARTICLE VI.**
45 **RESPONDING MEMBER PERSONNEL**

46
47 A. National Incident Management System - When providing assistance under this Agreement,
48 the Requesting Member and Responding Member shall be organized and shall function
49 under the National Incident Management System.

50

- 1 B. Control - While employees so provided may be under the supervision of the Responding
2 Member, the Responding Member's employees come under the direction and control of the
3 Requesting Member, consistent with the NIMS Incident Command System to address the
4 needs identified by the Requesting Member. The Requesting Member's Authorized Official
5 shall coordinate response activities with the designated supervisor(s) of the Responding
6 Member(s). The Responding Member's designated supervisor(s) must keep accurate
7 records of work performed by personnel during the specified Period of Assistance.
8
- 9 C. Food and Shelter – Whenever practical, Responding Member personnel must be self
10 sufficient for up to 72 hours. When possible, the Requesting Member shall supply
11 reasonable food and shelter for Responding Member personnel. If the Requesting Member
12 is unable to provide food and shelter for Responding personnel, the Responding Member's
13 designated supervisor is authorized to secure the resources necessary to meet the needs of
14 its personnel. Except as provided below, the cost for such resources must not exceed the
15 State per diem rates for that area. To the extent Food and Shelter costs exceed the State
16 per diem rates for the area, the Responding Member must demonstrate that the additional
17 costs were reasonable and necessary under the circumstances. Unless otherwise agreed
18 to in writing, the Requesting Member remains responsible for reimbursing the Responding
19 Member for all reasonable and necessary costs associated with providing food and shelter,
20 if such resources are not provided.
21
- 22 D. Communication – The Requesting Member shall provide Responding Member personnel
23 with radio equipment as available, or radio frequency information to program existing radio,
24 in order to facilitate communications with local responders and utility personnel.
25
- 26 E. Status - Unless otherwise provided by law, the Responding Member's officers and
27 employees retain the same privileges, immunities, rights, duties and benefits as provided in
28 their respective jurisdictions.
29
- 30 F. Licenses and Permits – To the extent permitted by law, Responding Member personnel that
31 hold licenses, certificates, or permits evidencing professional, mechanical, or other skills
32 shall be allowed to carry out activities and tasks relevant and related to their respective
33 credentials during the specified Period of Assistance.
34
- 35 G. Right to Withdraw - The Responding Member's Authorized Official retains the right to
36 withdraw some or all of its resources at any time for any reason in the Responding
37 Member's sole and absolute discretion and exercise of such right shall under no
38 circumstances constitute grounds for any claim against a Responding Member or its
39 Authorized Official. Notice of intention to withdraw must be communicated to the
40 Requesting Member's Authorized Official as soon as is practicable under the circumstances.
41

42 **ARTICLE VII.**
43 **COST- REIMBURSEMENT**
44

45 The Requesting Member shall reimburse the Responding Member for each of the following
46 categories of costs incurred during the specified Period of Assistance as agreed in whole or in
47 part by both parties; provided, that any Responding Member may assume in whole or in part
48 such loss, damage, expense, or other cost, or may loan such equipment or donate such
49 services to the Requesting Member without charge or cost.
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- 1 A. Personnel – The Responding Member shall be reimbursed by the Requesting Member for
2 personnel costs incurred for work performed during the specified Period of Assistance.
3 Responding Member personnel costs shall be calculated according to the terms provided in
4 their employment contracts or other conditions of employment. The Responding Member’s
5 designated supervisor(s) must keep accurate records of work performed by personnel
6 during the specified Period of Assistance. Requesting Member reimbursement to the
7 Responding Member must consider all personnel costs, including salaries or hourly wages,
8 costs for fringe benefits, and indirect costs.
9
- 10 B. Equipment – The Requesting Member shall reimburse the Responding Member for the use
11 of equipment during the specified Period of Assistance, including, but not limited to,
12 reasonable rental rates, all fuel, lubrication, maintenance, transportation, and
13 loading/unloading of loaned equipment. All equipment shall be returned to the Responding
14 Member in good working order as soon as is practicable and reasonable under the
15 circumstances. At a minimum, rates for equipment use must be based on the Federal
16 Emergency Management Agency’s (FEMA) Schedule of Equipment Rates. If a Responding
17 Member uses rates different from those in the FEMA Schedule of Equipment Rates, the
18 Responding Member must provide such rates orally or in writing to the Requesting Member
19 prior to supplying the equipment. Mutual agreement on which rates are used must be
20 reached in writing prior to dispatch of the equipment. Reimbursement for equipment not
21 referenced on the FEMA Schedule of Equipment Rates must be developed based on actual
22 recovery of costs. If Responding Member must lease a piece of equipment while its
23 equipment is being repaired, Requesting Member shall reimburse Responding Member for
24 such rental costs.
25
- 26 C. Materials and Supplies – The Requesting Member must reimburse the Responding Member
27 in kind or at actual replacement cost, plus handling charges, for use of expendable or non-
28 returnable supplies. The Responding Member must not charge direct fees or rental charges
29 to the Requesting Member for other supplies and reusable items that are returned to the
30 Responding Member in a clean, damage-free condition. Reusable supplies that are
31 returned to the Responding Member with damage must be treated as expendable supplies
32 for purposes of cost reimbursement.
33
- 34 D. Payment Period – The Responding Member must provide an itemized bill to the Requesting
35 Member for all expenses incurred by the Responding Member while providing assistance
36 under this Agreement. The Responding Member must send the itemized bill not later than
37 (90) ninety days following the end of the Period of Assistance. The Responding Member
38 may request additional periods of time within which to submit the itemized bill, and
39 Requesting Member shall not unreasonably withhold consent to such request. The
40 Requesting Member must pay the bill in full on or before the forty-fifth (45th) day following
41 the billing date. The Requesting Member may request additional periods of time within
42 which to pay the itemized bill, and Responding Member shall not unreasonably withhold
43 consent to such request, provided, however, that all payment shall occur not later than one-
44 year after the date a final itemized bill is submitted to the Requesting Member.
45
- 46 E. Records - Each Responding Member and its duly authorized representatives shall have
47 access to a Requesting Member’s books, documents, notes, reports, papers and records
48 which are directly pertinent to this Agreement for the purposes of reviewing the accuracy of
49 a cost bill or making a financial, maintenance or regulatory audit. Each Requesting Member
50 and its duly authorized representatives shall have access to a Responding Member’s books,
51 documents, notes, reports, papers and records which are directly pertinent to this

1 Agreement for the purposes of reviewing the accuracy of a cost bill or making a financial,
2 maintenance or regulatory audit. Such records shall be maintained for at least three (3)
3 years or longer where required by law.
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5 **ARTICLE VIII.**
6 **DISPUTES**
7

8 If any controversy or claim arises out of, or relates to, the execution of the Agreement, including,
9 but not limited to, alleged breach of the Agreement, the disputing Members shall first attempt to
10 resolve the dispute by negotiation, followed by mediation and finally shall be settled by
11 arbitration in accordance with the Rules of the American Arbitration Association. Any court of
12 competent jurisdiction may enter the judgment rendered by the arbitrators as final judgment that
13 is binding on the parties.
14

15 **ARTICLE IX.**
16 **REQUESTING MEMBER'S DUTY TO INDEMNIFY**
17

- 18 A. For Public Entities: Immunity from liability under this agreement shall be as set forth in Title
19 10, Chapter 3, Parts 1 and 9 of Montana Code Annotated.
20
- 21 B. For Private Entities: The Requesting Member shall assume the defense of, fully indemnify
22 and hold harmless, the Responding Member, its officers and employees, from all claims,
23 loss, damage, injury and liability of every kind, nature and description, directly or indirectly
24 arising from Responding Member's work, inaction and/or withdrawal of work or resources
25 during a specified Period of Assistance. The scope of the Requesting Member's duty to
26 indemnify includes, but is not limited to, suits arising from, or related to, negligent or wrongful
27 or withheld use of equipment or supplies on loan to the Requesting Member, or faulty
28 workmanship or other negligent acts, errors or omissions by Responding Member or the
29 Responding Member personnel. The Requesting Member's duty to indemnify is subject to,
30 and shall be applied consistent with, the conditions set forth in Article X.
31
- 32 C. For Tribal Entities: A federally recognized Indian tribe located within the boundaries of the
33 state may participate in this agreement as allowed in Title 10, Chapter 3, Part 9 of Montana
34 Code Annotated. In this case, immunity from liability under this agreement shall be as set
35 forth in Title 10, Chapter 3, Parts 1 and 9 of Montana Code Annotated.
36
37

38 **ARTICLE X.**
39 **SIGNATORY INDEMNIFICATION**
40

- 41 A. For Public Entities: This Article shall not apply.
42
- 43 B. For Private Entities: In the event of a liability, claim, demand, action, or proceeding of
44 whatever kind or nature arising out of a specified Period of Assistance, the Members who
45 receive assistance shall have a duty to defend, indemnify, save and hold harmless all Non-
46 Responding Members, their officers, agents and employees from any liability, claim,
47 demand, action, or proceeding of whatever kind or nature, including legal fees, arising out of
48 a Period of Assistance to the extent provided by law.
49
- 50 C. For Tribal Entities: Signatory indemnification shall be in accordance with the laws of the
51 State of Montana.

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3 **ARTICLE XI.**
4 **WORKER'S COMPENSATION CLAIMS**

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

9
10 **ARTICLE XII.**
11 **NOTICE**

12
13 A Member who becomes aware of a claim or suit that in any way, directly or indirectly,
14 contingently or otherwise, affects or might affect other Members of this Agreement shall provide
15 prompt and timely notice to the Members who may be affected by the suit or claim. Each
16 Member reserves the right to participate in the defense of such claims or suits as necessary to
17 protect its own interests.

18
19 **ARTICLE XIII.**
20 **INSURANCE**

21
22 Members of this Agreement shall maintain an insurance policy or maintain a self insurance
23 program that covers activities that it may undertake by virtue of membership in the Mutual Aid
24 and Assistance Program.

25
26 **ARTICLE XIV.**
27 **SENSITIVE AND CONFIDENTIAL INFORMATION**

28
29 To the extent provided by law, any Member or Associate Member shall maintain in the strictest
30 confidence and shall take all reasonable steps necessary to prevent the disclosure of any
31 Confidential Information or Sensitive Information disclosed under this Agreement. If any
32 Member, Associate Member, third party or other entity requests or demands, by subpoena or
33 otherwise, that a Member or Associate Member disclose any Confidential Information disclosed
34 under this Agreement, the Member or Associate Member shall immediately notify the owner of
35 the Confidential Information and shall take all reasonable steps necessary to prevent the
36 disclosure of any Confidential Information by asserting all applicable rights and privileges with
37 respect to such information and shall cooperate fully in any judicial or administrative proceeding
38 relating thereto. Confidential Information and Sensitive Information shall not be copied or
39 distributed without permission of the owner and the original shall be returned to the owner and
40 copies returned or destroyed after they are no longer needed to provide assistance.

41
42 **ARTICLE XV.**
43 **EFFECTIVE DATE**

44
45 This Agreement shall be effective after the Water and Wastewater Utility's authorized
46 representative executes the Agreement and the Committee Chair receives the Agreement. The
47 Committee Chair shall maintain a master list of all members of the Mutual Aid and Assistance
48 Program.

1 **ARTICLE XVI.**
2 **WITHDRAWAL**
3

4 A Member may withdraw from this Agreement by providing written notice of its intent to
5 withdraw to the Committee Chair. Withdrawal takes effect 60 days after the appropriate officials
6 receive notice. Withdrawal from this Agreement shall in no way affect a Requesting Member's
7 duty to reimburse a Responding Member for cost incurred during a Period of Assistance or a
8 Requesting Member's duty to indemnify a Responding Member as herein provided, which duties
9 shall survive such withdrawal.

10
11 **ARTICLE XVII.**
12 **MODIFICATION**
13

14 No provision of this Agreement may be modified, altered or rescinded by individual parties to the
15 Agreement. Modifications to this Agreement may be due to programmatic operational changes
16 to support the agreement, legislative action, creation of an interstate aid and assistance
17 agreement, or other developments. Modifications require a simple majority vote of Members.
18 The Committee Chair must provide written notice to all Members of approved modifications to
19 this Agreement. Approved modifications take effect 60 days after the date upon which notice is
20 sent to the Members.

21
22 **ARTICLE XVIII.**
23 **SEVERABILITY**
24

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

30
31 **ARTICLE XIX.**
32 **PRIOR AGREEMENTS**
33

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

36
37 **ARTICLE XX.**
38 **PROHIBITION ON THIRD PARTIES AND ASSIGNMENT OF RIGHTS/DUTIES**
39

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

43
44 **ARTICLE XXI.**
45 **INTRASTATE AND INTERSTATE MUTUAL AID AND ASSISTANCE PROGRAMS**
46

47 To the extent practicable, Members of this Agreement shall participate in Mutual Aid and
48 Assistance activities conducted under the State of Montana Intrastate Mutual Aid System and
49 the Interstate Emergency Management Assistance Compact (EMAC). Members may voluntarily
50 agree to participate in an interstate Mutual Aid and Assistance Program for water and
51 wastewater utilities through this Agreement if such a Program were established.

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

Water/Wastewater Utility: _____

By: _____

By: _____

Title: _____

Title _____

Please Print Name

Please Print Name

Approved as to form and legality

By: _____
Attorney for Utility

Please Print Name

Accepted by MTWARN

By: _____

Title: Chairperson _____

Date: _____