



**DATE:** April 3, 2014

**TO:** Michael G. Herring, ICMA-CM  
City Administrator

**FROM:** James A. Eckrich, P.E. *JAE*  
Public Works Director / City Engineer

**RE:** Public Works Mutual Aid Agreement

**III.J.**

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As you know, the City of Chesterfield has an executed Public Works Mutual Aid Agreement (Agreement) with the cities of Manchester, Ellisville, and Ballwin. It has recently come to my attention that the Agreement contains a section (VIII-E) whereby the provider of the mutual aid service (Provider) is only reimbursed in cases of a third party reimbursement. These clauses are not allowed by FEMA and would jeopardize any future reimbursement that a Provider would receive. Accordingly, I have drafted a revised Section VIII-E which removes the contingency and details the manner in which Providers would be reimbursed by the party who receives the services (Recipient). In practice, it would still be our intention to only bill the other cities in cases of a third party reimbursement. However, by removing the language we would be compliant with FEMA requirements regarding mutual aid agreements.

A copy of the new draft Agreement is attached. It has been reviewed by the City Attorney and FEMA. The draft Agreement has also been submitted to the cities of Ballwin, Ellisville, and Manchester, who have each conceptually agreed to the modification. Once each city formally approves the draft Agreement, a final Agreement will be routed for signatures.

After the Agreement is executed by each of the four cities, it is our intention to market it to other cities in the St. Louis Metropolitan area. Our hope to use this Agreement as an impetus to create a public works mutual aid agreement for the St. Louis area.

#### **Action Recommended**

This matter should be forwarded to the Planning and Public Works Committee for consideration. Should the PPW Committee concur with this recommendation, the matter should be forwarded to City Council for execution of the attached ordinance authorizing the City of Chesterfield to participate in the Public Works Mutual Aid Agreement.

Cc: Michael O. Geisel, Director of Public Services

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BILL NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A REVISED PUBLIC WORKS MUTUAL AID AGREEMENT.**

**WHEREAS**, the City of Chesterfield has an existing Public Works Mutual Aid Agreement with the cities of Ballwin, Ellisville, and Manchester; and

**WHEREAS**, each city desires to ensure that the Public Works Mutual Aid Agreement meets all current standards, including those set by the Federal Emergency Management Agency.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, AS FOLLOWS:

Section 1. The City of Chesterfield hereby accepts the Public Works Mutual Aid Agreement as set out in "Exhibit 1" attached hereto.

Section 2. The City Administrator and City Clerk are authorized to execute the Public Works Mutual Aid Agreement.

Section 3. This Ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

[FIRST READING HELD: \_\_\_\_\_ ]

This Public Works Emergency Response Mutual Aid Agreement (hereinafter "Agreement") is entered into by each of the entities that executes and adopts the understandings, commitments, terms, and conditions contained herein:

**WHEREAS**, Section 44.415 of the Missouri Revised Statutes authorizes municipalities to cooperate with other municipalities to make the most efficient use of their resources on a basis of mutual cooperation; and

**WHEREAS**, municipalities are vulnerable to a variety of natural and technological disasters and recognizing this vulnerability, this Agreement's intended purposes are to:

- (1) Reduce damage, injury, and loss of life and property;
- (2) Prepare for prompt and efficient rescue, care, and treatment of threatened or affected persons;
- (3) Provide for the rapid and orderly rehabilitation of persons and restoration of property; and
- (4) Provide for cooperation and coordination of activities relating to emergency and disaster mitigation, preparedness, response, and recovery; and

**WHEREAS**, the parties to this Agreement and the State of Missouri have recognized the importance of coordination and cooperation between local governments; and

**WHEREAS**, pursuant to Section 44.415 of the Missouri Revised Statutes, entities entering into cooperative mutual aid and assistance agreements may include provisions for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law; and

**WHEREAS**, the entities which have chosen to become signatories to this Agreement wish to provide mutual aid and assistance among one another during times of disaster or public works emergencies; and

**WHEREAS**, it is recognized and accepted by the entities which have chosen to become signatories to this Agreement, that municipalities can best serve their constituencies through cooperation and sharing of resources, thereby maximizing utilization and minimizing expense for redundant equipment and resources.

**THEREFORE**, pursuant to Section 44.415 of the Missouri Revised Statutes, the undersigned entities agree to enter into this Agreement for cooperative and reciprocal public works emergency response aid and assistance, with this Agreement embodying the understandings, commitments, terms, and conditions for said aid and assistance, as follows:

**SECTION I: DEFINITIONS**

The following definitions will apply to the terms appearing in this Agreement.

A. "AID AND ASSISTANCE" includes, but is not limited to, personnel, equipment, facilities, services, supplies.

B. "AUTHORIZED REPRESENTATIVE" means an entity's employee who has been authorized, in writing by that entity, to request, to offer, or to otherwise provide aid and assistance under the terms of this Agreement.

The list of Authorized Representatives for each entity shall be attached to the executed copy of this Agreement. (In the event of a change in personnel, unless otherwise notified, the presumption will be that the successor to the employee's position will be the authorized representative.)

C. "DISASTER" means a calamitous event threatening loss of life or significant loss or damage to property, including, but not limited to flood, hurricane, tornado, dam break, or other naturally-occurring catastrophe or man-made accidental, military, or paramilitary event.

D. "MUTUAL AID RESOURCE LIST" means the list provided by each entity listing equipment, personnel and other resources an entity has available for aid and assistance.

E. "ENTITY" means a governmental entity which has adopted and executed this Agreement.

F. "PROVIDER" means the entity which has received a request to furnish aid and assistance from another entity in need (the "Recipient") and has agreed to provide the aid and assistance requested. The Provider shall be represented by the authorized representative of the local agency charged with recovery, repair and operational activities including, but not limited to, opening of public ways; removal of debris; building of protective barriers; management of physical damage to structures and terrain; transportation of persons, supplies, and equipment; and repair and operation of municipal facilities.

G. "RECIPIENT" means the entity setting forth a request for aid and assistance to another entity (the "Provider"). The Recipient shall be represented by the authorized representative of the local agency requesting recovery, repair and operational activities including, but not limited to, opening of public ways; removal of debris; building of protective barriers; management of physical damage to structures and terrain; transportation of persons, supplies, and equipment; and repair and operation of municipal facilities.

**SECTION II: INITIAL RECOGNITION OF PRINCIPLE BY ALL PARTIES;  
AGREEMENT PROVIDES NO RIGHT OF ACTION FOR THIRD PARTIES**

A. As this is a reciprocal contract, it is recognized that any entity to this Agreement may be requested by another entity to be a Provider. It is mutually understood that each entity's foremost responsibility is to its own citizens. The provisions of this Agreement shall not be construed to impose an unconditional obligation on any entity to provide aid and assistance pursuant to a request from another entity.

Accordingly, when aid and assistance have been requested, an entity may in good faith withhold the resources necessary to provide reasonable and adequate protection for its own community, by deeming itself unavailable to respond and so informing the Recipient.

B. Given the finite resources of any jurisdiction and the potential for each entity to be unavailable for aid and assistance at a given point in time, the parties mutually encourage each other to enlist other entities in mutual aid and assistance efforts and to enter into such agreements accordingly. Concomitantly, the parties fully recognize that there is a highly meritorious reason for entering into this Agreement, and accordingly shall attempt to render assistance in accordance with the terms of this Agreement to the fullest extent possible.

C. All functions and activities performed under this Agreement are hereby declared to be governmental functions conducted pursuant to the powers conferred by Missouri Revised Statutes. Functions and activities performed under this Agreement are carried out for the benefit of the general public and not for the benefit of any specific individual or individuals. Accordingly, this Agreement shall not be construed as or deemed to be an agreement for the benefit of any third parties or persons and no third parties or persons shall have any right of action under this Agreement for any cause whatsoever. All immunities provided by law shall be fully applicable as elaborated upon in Section XI of this Agreement.

### **SECTION III: BI-ANNUAL REVIEW**

The authorized representatives of each entity shall meet not less than bi-annually to review the Agreement and, if applicable, discuss recommendations to be made to their respective governing bodies for amendments to the Agreement pursuant to Section XIII of this Agreement. Such reviews will be scheduled during January of each even numbered calendar year. A current Mutual Aid Resource List shall be resubmitted at each of the bi-annual reviews.

### **SECTION IV: PROCEDURES FOR REQUESTING ASSISTANCE**

Mutual aid and assistance shall not be requested unless the resources currently available are deemed inadequate by Recipient. When Recipient becomes affected by a disaster, or otherwise deems its resources inadequate to address an emergency response, recovery, or an operational need; it may request mutual aid and assistance by communicating the request directly to one or more Providers on the Mutual Aid Resource List, indicating the request is made pursuant to this Agreement. The request shall be followed as soon as practicable by a written confirmation of that request. All requests for mutual aid and assistance shall be transmitted as set forth below.

A. **METHOD OF REQUEST FOR MUTUAL AID AND ASSISTANCE:** Recipient shall directly contact Provider's authorized representative, setting forth the information in paragraph B of this Section. All communications shall be conducted directly between Recipient and Provider. Recipient shall be responsible for the costs and expenses incurred by all Providers providing aid and assistance pursuant to the provisions of this Agreement as noted in Section VIII of this Agreement.

B. **REQUIRED INFORMATION:** Each request for aid and assistance shall be accompanied by the following information, in writing or by any other available means, to the extent known:

(1) **Condition and Status:** A general description summarizing the condition necessitating the request for aid (i.e., whether the condition is planned, imminent, in progress, or has already occurred) and of the damage sustained to date;

(2) **Services:** Identification of the service function(s) for which assistance is needed and the particular type of aid and assistance needed;

(3) Aid and Assistance: The amount and type of personnel, equipment, materials, and supplies needed and a reasonable estimate of the length of time they will be needed;

(4) Facilities: The need for sites, structures, or buildings outside Recipient's geographical limits to serve as staging areas for incoming emergency goods and services; and

(5) Meeting Time and Place: An estimated time and a specific place for a representative of Recipient to meet the personnel and resources of any Provider.

C. STATE AND FEDERAL ASSISTANCE: In the event of an expected declaration of local emergency and if the severity of the event is expected to exhaust the reasonably available resources on the Mutual Aid Resource List, then the Recipient shall be responsible for notifying the appropriate agencies or coordinating requests for state and/or federal assistance.

**SECTION V: PROVIDER'S ASSESSMENT OF AVAILABILITY OF RESOURCES AND ABILITY TO RENDER ASSISTANCE**

A. When contacted by a Recipient in need, Provider's authorized representative shall assess Provider's own local situation in order to determine if personnel, equipment, and other resources are available. If Provider's authorized representative determines that Provider has available resources and agrees to provide the aid and assistance requested, Provider's authorized representative shall so notify the Recipient. Provider shall complete a written acknowledgment regarding the aid and assistance to be rendered (or a rejection of the request) and shall transmit it by the most efficient practical means to the Recipient for a final response.

Provider's acknowledgment shall contain the following information:

(1) In response to the items contained in the request, an acknowledgment of the personnel, equipment, and other resources to be sent;

(2) The projected length of time such personnel, equipment, and other resources will be available to serve Recipient, particularly if the period is projected to be shorter than one week (as provided in Section VII of this Agreement.)

(3) The estimated time when the aid and assistance provided will arrive at the location designated by the authorized representative of the Recipient; and

(4) The name of the person(s) to be designated as Provider's supervisory personnel (pursuant to Section VI of this Agreement).

B. Nothing in this section shall be deemed to unconditionally require any entity to this Agreement to provide aid and assistance to any Recipient. Each entity has the right to reject any request for aid and assistance.

#### **SECTION VI: SUPERVISION AND CONTROL**

A. Provider shall designate contact persons/coordinators among its employees sent to render aid and assistance to Recipient. As soon as practicable, Recipient shall assign work tasks to Provider's contact persons/coordinators, and unless specifically instructed otherwise, Recipient shall have the responsibility for coordinating communications between Provider's contact persons/coordinators and Recipient.

B. Based upon such assignments set forth by Recipient, Provider's contact persons/coordinators shall:

(1) Have the authority to assign work and establish work schedules for Provider's personnel.

Provider should be prepared to furnish communications equipment sufficient to maintain communications among its respective operating units, and if this is not possible, Provider shall notify Recipient accordingly;

(2) In accordance with Section VIII of this Agreement, maintain a log of daily personnel time records, material records, equipment hours, and other expenses;

(3) Report work progress to Recipient at mutually agreed upon intervals.

C. Provider is to provide adequate supervision and control of Provider's personnel as necessary to comply with the workers compensation laws of Missouri and Section X of this Agreement.

D. When equipment and vehicles are supplied, they should be operated by qualified employees of the Provider agency whenever possible. However, this should not restrict any agency from operating equipment or vehicles when qualified operators of the providing agency are not available for that purpose with the consent of the Provider.



**SECTION VII: LENGTH OF TIME FOR AID AND ASSISTANCE;  
RENEWABILITY; RECALL**

A. Unless otherwise provided, the duration of Provider's aid and assistance shall be presumed to be for an initial period of not more than Seventy Two (72) hours. Thereafter, assistance may be extended as the situation warrants for periods agreed upon by the authorized representatives of Provider and Recipient. The seventy two hour period and any other agreed upon time periods shall start when the aid and assistance departs from Provider's location with the intent of going to Recipient's location. The aid and assistance shall end when the aid and assistance returns to Provider's location and no further expectation of aid and assistance exists between Provider and Recipient.

B. In accordance with Section II of this Agreement, Provider's aid and assistance shall remain subject to recall by Provider to provide for its own citizens if circumstances so warrant. Provider shall make a good faith effort to provide at least twenty-four (24) hours advance notification to Recipient of Provider's intent to terminate portions of or all aid and assistance, unless such notice is not practicable, in which case as much notice as is reasonable under the circumstances shall be provided.

**SECTION VIII: COST DOCUMENTATION & REIMBURSEMENT**

**A. PERSONNEL -**

Provider shall continue to pay its employees according to its then prevailing ordinances, rules, regulations, and collective bargaining agreements. At the conclusion of the period of aid and assistance, the Provider shall document all direct and indirect payroll costs plus any taxes and employee benefits which are measured as a function of payroll (i.e.; FICA, unemployment, retirement, etc.).

**B. PROVIDER'S TRAVELING EMPLOYEE NEEDS -** Provider shall document the basic needs of Provider's traveling employees, such as reasonable out-of-pocket costs and expenses of Provider's personnel, including, but not limited to, transportation expenses for travel to and from the stricken area during the period of aid and assistance.

**C. EQUIPMENT -**

Provider shall document the use of its equipment during the period of aid and assistance including, but not limited to, all repairs to its equipment as

determined necessary by its on-site supervisor(s) to maintain such equipment in safe and operational condition, fuels, miscellaneous supplies, and repairs directly caused by provision of the aid and assistance.

**D. MATERIALS AND SUPPLIES -**

Provider shall document the types and amounts of all materials and supplies furnished by it and used or damaged during the period of aid and assistance.

**E. REIMBURSEMENT OF COSTS** – Provider's costs as documented in this Section will be reimbursed by Recipient. Provider shall provide a summary of all costs to Recipient within sixty days of the end of an event. Recipient will provide payment to Provider in full within ninety days of receipt of the cost summary.

**SECTION IX: RIGHTS AND PRIVILEGES OF PROVIDER'S EMPLOYEES**

Whenever Provider's employees are rendering aid and assistance pursuant to this Agreement, such employees shall retain the same powers, duties, immunities, and privileges they would ordinarily possess if performing their duties within the geographical limits of Provider.

**SECTION X: PROVIDER'S EMPLOYEES COVERED AT ALL TIMES BY PROVIDER'S WORKERS' COMPENSATION POLICY**

Recipient shall not be responsible for reimbursing any amounts paid or due as benefits to Provider's employees due to personal injury or death occurring during the period of time such employees are engaged in the rendering of aid and assistance under this Agreement. It is mutually understood that Recipient and Provider shall be responsible for payment of such workers' compensation benefits only to their own respective employees. Further, it is mutually understood that Provider will be entirely responsible for the payment of workers' compensation benefits to its own employees.

**SECTION XI: IMMUNITY**

All activities performed under this Agreement are hereby declared to be governmental functions and the liability of both Provider and Recipient shall be governed by Missouri law and all grants of immunity pursuant to Section 537.600 of the Missouri Statutes shall apply.

**SECTION XII: PARTIES MUTUALLY AGREE TO HOLD EACH OTHER HARMLESS**

Each entity (as indemnitor) agrees to protect, defend, indemnify, and hold all other parties (as indemnitees), and their officers, employees, and agents, free and harmless from and against any and all losses, penalties, damages, assessments, costs, charges, professional fees, and other expenses or liabilities of every kind including, but not limited to, attorney's fees and costs of litigation arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind in connection with or arising out of indemnitor's negligent or intentional acts and errors and/or omissions. Indemnitor further agrees to investigate, handle, respond to, provide defense for, and defend any such claims, etc. at indemnitor's sole expense and agrees to bear all other costs and expenses related thereto. To the extent that immunity does not apply, each entity shall bear the risk of its own actions, as it does with its day-to-day operations, and determine for itself what kinds of insurance, and in what amounts, it should carry. Each entity understands and agrees that any insurance protection obtained shall in no way limit the responsibility to indemnify, keep, and save harmless the other parties to this Agreement.

### **SECTION XIII: AMENDMENTS; ADDITIONAL MEMBERS**

#### **A. MANNER -**

This Agreement may be amended at any time by (1) unanimous consent of the parties as determined by the governing units of the parties or (2) upon the mutual written consent of the Recipient and Provider.

#### **B. ADDITION OF OTHER ENTITIES -**

Additional entities may become parties to this Agreement upon: (1) acceptance and execution of this Agreement; (2) sending the executed Agreement to all parties; and (3) sending a copy of its completed Mutual Aid Resource List to each of the other parties.

### **SECTION XIV: INITIAL DURATION OF AGREEMENT; RENEWAL; TERMINATION**

This Agreement shall be binding for not less than one (1) year from its effective date. Thereafter, this Agreement shall automatically renew annually. However, any entity may withdraw from the Agreement at any time by written notification from Authorized Representative served personally or by registered mail upon all parties. The withdrawal shall not be effective until sixty (60) days after notice thereof has been served upon or sent to all other parties. An

entity's withdrawal from this Agreement shall not affect an entity's liability or obligation under the terms of this Agreement incurred hereunder. Once the withdrawal is effective, the withdrawing entity shall no longer be a party to this Agreement, but this Agreement shall continue to exist among the remaining entities. The Agreement may be terminated at any time after the initial duration of the Agreement by unanimous consent of the parties as determined by the governing units of the parties.

**SECTION XV: HEADINGS**

The headings of various sections and subsections of this Agreement have been inserted for convenient reference only and shall not be construed as modifying, amending, or affecting in any way the express terms and provisions of this Agreement or their interpretation.

**SECTION XVI: SEVERABILITY ----- EFFECT ON OTHER AGREEMENTS**

Should any clause, sentence, provision, paragraph, or other part of this Agreement be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Agreement. Each of the parties declares that it would have entered into this Agreement irrespective of the fact that any one or more of this Agreement's clauses, sentences, provisions, paragraphs, or other parts have been declared invalid. Accordingly, it is the intention of the parties that the remaining portions of this Agreement shall remain in full force and effect without regard to the clause(s), sentence(s), provision(s), paragraph(s), or other part(s) invalidated.

**SECTION XVII: EFFECTIVE DATE**

This Agreement shall be effective upon proper approval and execution hereof by at least two entities. The effective date shall be the date upon which the second entities executed the Agreement. As to all subsequently added entities, the effective date shall be the date upon which the newly added entities properly executed the Agreement.

Execution of this agreement may be accomplished by facsimile or PDF signatures.

NOW THEREFORE, in acknowledgment of the acceptance of this Agreement, each of the parties have caused this Public Works Emergency Response Mutual Aid Agreement to be duly executed in its name and behalf by its chief executive officer, who has signed accordingly with seals affixed and attested with

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concurrence of a majority of its governing board, as of the date set forth in this Agreement.

**City of Chesterfield**

By: Michael G. Herring Date: \_\_\_\_\_

Title: City Administrator

Attest: \_\_\_\_\_ Date: \_\_\_\_\_

Title City Clerk

**DULY AUTHORIZED REPRESENTATIVE(S)**

Name: Mike O'Connor Title: Superintendent of Maintenance Operations

Address: 165 Public Works Drive

City/State/Zip: Chesterfield, Missouri, 63005

Phone: 636-537-9602 After hours Phone: 314-680-9004

E-Mail: moconnor@chesterfield.mo.us Fax: 636-537-4798

Name: James A. Eckrich Title: Public Works Director\City Engineer

Address: 690 Chesterfield Parkway West

City/State/Zip: Chesterfield, Missouri 63017

Phone: 636-537-4764 After hours Phone: 314-680-9803

E-Mail: jeckrich@chesterfield.mo.us Fax: 636-537-4798

Name: Mike Geisel Title: Director of Public Services

Address: 690 Chesterfield Parkway West

City/State/Zip: Chesterfield, Missouri 63017

Phone: 636-537-4760 After hours Phone: 314-680-9802

E-Mail: mgeisel@chesterfield.mo.us Fax: 636-537-4798

DRAFT AGREEMENT 4/2/2014

**City of** \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Date: \_\_\_\_\_

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**DULY AUTHORIZED REPRESENTATIVE(S)**

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DRAFT AGREEMENT 4/2/2014

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# Current Agreement

terminate portions of or all aid and assistance, unless such notice is not practicable, in which case as much notice as is reasonable under the circumstances shall be provided.

## **SECTION VIII: COST DOCUMENTATION & REIMBURSEMENT**

### **A. PERSONNEL -**

Provider shall continue to pay its employees according to its then prevailing ordinances, rules, regulations, and collective bargaining agreements. At the conclusion of the period of aid and assistance, the Provider shall document all direct and indirect payroll costs plus any taxes and employee benefits which are measured as a function of payroll (i.e.; FICA, unemployment, retirement, etc.).

**B. PROVIDER'S TRAVELING EMPLOYEE NEEDS -** Provider shall document the basic needs of Provider's traveling employees, such as reasonable out-of-pocket costs and expenses of Provider's personnel, including without limitation transportation expenses for travel to and from the stricken area during the period of aid and assistance.

### **C. EQUIPMENT -**

Provider shall document the use of its equipment during the period of aid and assistance including without limitation all repairs to its equipment as determined necessary by its on-site supervisor(s) to maintain such equipment in safe and operational condition, fuels, miscellaneous supplies, and repairs directly caused by provision of the aid and assistance.

### **D. MATERIALS AND SUPPLIES -**

Provider shall document all materials and supplies furnished by it and used or damaged during the period of aid and assistance.

**E. REIMBURSEMENT OF COSTS -** Provider's costs as documented in this Section will only be reimbursed by Recipient if Recipient receives a monetary benefit, grant or disaster funding from a third party including, but not limited to, federal or state disaster relief.

## **SECTION IX: RIGHTS AND PRIVILEGES OF PROVIDER'S EMPLOYEES**

Whenever Provider's employees are rendering aid and assistance pursuant to this Agreement, such employees shall retain the same powers, duties, immunities, and