

# **Storm Water Cooperative Agreement Handbook**

*Prepared by the  
North Central Texas Council of Governments  
Department of Environment & Development*

*September 2009*



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## 1.0 INTRODUCTION

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The North Central Texas Council of Governments (NCTCOG) has worked with local governments and other stakeholders to develop and implement a Regional Storm Water Management Program (RSWMP) to address storm water quality issues affecting the North Central Texas region. The goal of the RSWMP is to assist local government agencies with protecting the region's waters by implementing a cooperative and comprehensive program to manage storm water runoff in order to maximize the utilization of the region's lakes, streams, and rivers for drinking water supply, recreation, fish and wildlife habitat, and economic opportunity.

This handbook was prepared by NCTCOG staff and approved by the RSWMP's Illicit Discharge Detection & Elimination (IDDE) Task Force for use by local governments in the preparation of cooperative intergovernmental agreements. The IDDE Task Force is a group of representatives from participating local governments that explore options for the development of a guidance program for use in detecting and eliminating illicit discharges.

### 1.1 Project Background

The Texas Commission on Environmental Quality (TCEQ) is authorized to enforce the Texas Pollution Discharge Elimination System (TPDES) program. The TCEQ requires most entities, owned and operated by a public agency, that discharge storm water directly into streams and rivers to obtain authorization to do so through the TPDES Municipal Separate Storm Sewer System (MS4) Permit process. The TCEQ recommends that adjacent local governments consider working together to administer and implement their storm water management programs (SWMP). For example, the TPDES Phase I MS4 Permit states in Part III.A. that *"implementation of the SWMP may be achieved through participation with other public agencies, or with private entities in cooperative efforts to satisfy the requirements of Part III of this permit."*

As part of the RSWMP, the IDDE project chosen for the FY2009 Work Program was to *Research the Purpose and Need for Interlocal & Mutual Aid Agreements*. The research focused on ways in which local governments could use intergovernmental agreements to cooperatively address storm water permit regulations and was incorporated into this guidance document to be used by our local governments. The content of this document includes a definition of the various types of agreements and the features that make them significantly different from each other. It also addresses the benefits of local governmental cooperative agreements as well as the recommended steps for creating these agreements. This document provides examples of local government cooperative storm water programs both in Texas and around the country. The

material in this handbook was derived from several guidance documents published by other state and governmental agencies.

## **2.0 LEGAL AUTHORITY**

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### **2.1 Interlocal Cooperation Act<sup>1</sup>**

In May of 1971, the Texas Legislature passed the Interlocal Cooperation Act to promote activities among local governments across Texas. The Interlocal Cooperation Act is a broad, general mandate that has been used *“to increase the efficiency and effectiveness of local governments (i.e. a county, municipality, special district, junior college district or other political subdivisions) by authorizing them to contract, to the greatest extent, with one another and with agencies of the state”* (Section 791.001). The Interlocal Cooperation Act grants no additional governmental powers and does not affect the basic structure and organization of government in Texas. It defines and clarifies the rights of local governments for interlocal contracting and provides guidelines for successful contracting. Section 791.011 states that an interlocal contract may be used to *“study the feasibility of the performance of a governmental function or service by an interlocal contract or provide a governmental function or service that each party to the contract is authorized to perform individually.”* This part of the statute permits the rules, regulations, and ordinances of either the recipient or providing jurisdiction to be used to govern the contractual performance that the parties agree upon. It also suggests that the legislature does not intend to convey authority to local governments to perform functions and services that they could not legally perform on their own. The reference in Section 791.013, authorizes contracting parties to create a separate agency or designate an existing political subdivision to supervise the performance of an interlocal contract. It also empowers such an agency or political subdivision to hire staff and undertake administrative services (i.e. tax collection, purchasing, personnel services) as needed to carry out the terms of the agreement.

There are other state statutes that permit local governments to contract with one another or with other public entities. Intergovernmental agreements may be pursued by local governments through one of these special statutes or under the more general terms of the Texas Interlocal Cooperation Act. See Appendix B for a list of these statutes by code citation and function category.

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<sup>1</sup> *Interlocal Cooperation Act*, Texas Government Code: Title 7 Chapter 791, 1971, *Handbook for Interlocal Contracting in Texas*, University of Texas at Arlington, 1972., *The Interlocal Contract in Texas*, University of Texas at Arlington, 1990.

Some government entities in Texas are not allowed by state law to create or enforce ordinances; they must implement their storm water management programs to the extent allowable under state and local law. As specified in the TPDES Phase II MS4 permit Part III, *“if the permittee does not have enforcement authority and is unable to meet the goals of this general permit...the permittee shall...enter into interlocal agreements with municipalities where the small MS4 is located...or if the permittee is unable to enter into interlocal agreements, notify the TCEQ’s Field Operations Division...”* Counties can only enforce against violators to the extent allowed under state law, typically in reference to county regulation of subdivisions (Texas Local Govt. Code Chapter 232), abatement of public nuisances (Texas Health & Safety Code Chapter 343), and illegal dumping (Texas Health & Safety Code Chapter 365).

### **3.0 TYPES OF AGREEMENTS<sup>2</sup>**

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One of the most common ways to cooperate is through the use of intergovernmental agreements. There are several ways in which agreements can be formed and structured. One form can be bi-lateral, which includes only two parties agreeing to one or more services. Agreements can also be multi-lateral which includes three or more parties that have a common interest in a specific function or service. Intergovernmental agreements can be structured in three ways. The first and most common agreement structure is a fee-for-service arrangement. The terms of such an agreement call for one jurisdiction to furnish a product or service to the other in return for a fee. The second way is a joint-enterprise arrangement in which two jurisdictions pool their resources to carry out a function or service that benefits them both. The third way is a standby agreement that involves one or more jurisdictions agreeing to make certain resources available to other jurisdictions under specified conditions.

Intergovernmental agreements may be formal (written) or informal (oral). Most agreements are written in order to simplify the complexity of the matters under the contract, establish the duration of the contract and how long it will be in effect, and identify the amount of money, if any, will be involved in carrying out the duties of the contract. Oral (verbal) agreements can be established over the phone or through one-on-one conversation; they are sometimes even paired with a handshake. The downside of oral agreements is that they are often made under the misguided view that a written agreement is too binding and will limit the freedoms of the participating jurisdictions. Oral agreements often cause misunderstandings which can lead to costly legal battles if a major issue arises that was specified or decided upon in the very beginning.

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<sup>2</sup> *The Interlocal Contract in Texas*, University of Texas at Arlington, 1990

This section will give definitions and descriptions of several different types of cooperative agreements: Handshake (Gentleman's) Agreements, Memorandum of Agreement and Memorandum of Understanding, Mutual Aid Agreements, and Interlocal Agreements. Also provided are examples of agreements that have been established as part of storm water-related programs.

### **3.1 Definitions**

#### **3.1.1 Handshake (Gentlemen's) Agreement**

Handshake (Gentlemen's) agreements are informal, unwritten working arrangements between two or more parties. This type of agreement can be very simple and limited in scope; it does not always involve an actual physical "handshake" between the participating entities. The arrangement is often worked out between employees, with no action by the governing body, and can continue for years to the mutual benefit of all parties involved. This type of agreement could be useful in situations for instance when a city lends a street sweeper to another city for a few weeks and obtains use of a paver for several weeks in return.

Handshake (Gentlemen's) Agreements:

- Are easy to arrange
- Are most commonly used among small cities or isolated towns and counties
- Are used when no formal or lasting commitment is required
- Can be threatening to participants due to informality
- Can result in a misunderstanding
- Can overlook major provisions such as liability

#### **EXAMPLE #1**

##### **City of Dallas and Dallas Area Rapid Transit (DART)<sup>3</sup>**

##### ***Bi-lateral, Joint-Service***

The City of Dallas and DART have been in the process of discussing the possibility of developing a cooperative agreement similar to a draft agreement that was established between Dallas and TxDOT-Dallas District (See Appendix C, page 3). At this time, the City of Dallas and DART have a verbal agreement to cooperate with each other on certain storm water compliance activities along the DART Right-of-Way (ROW). They are not sure at this point if it will ever become a written agreement; however, if it does,

<sup>3</sup> Information gathered through correspondence with DART staff, May 2009

they would like to use a format similar to a Memorandum of Understanding. Since DART has very stringent safety regulations, they would need to include specific safety provisions and ROW access procedures. Dallas inspectors would not be allowed to just walk onto DART ROW. The agreement would generally outline the procedures for the notification and inspection of DART's construction projects.

### **3.1.2 Memorandum of Agreement (MOA) and Memorandum of Understanding (MOU)**

MOAs and MOUs are written agreements that can be used as statements of cooperation or understanding about a specific or general topic between two or more parties. According to the Institute of Tribal Environmental Professionals (ITEP), there is no established legal difference between the two terms, and they can be used interchangeably. MOAs are sometimes thought to be more of a significant commitment than an MOU since a contract is an agreement and an MOA contains the word "agreement". An MOA can include any or all of a contract's terms and conditions and carry as much legal weight as a contract. MOA/MOU can be an attractive alternative to a standard contract if none (or just some) of the standard terms and conditions are included because it will be simpler to use. They can also be specific or general or contain as little or as much obligation as both parties are willing to sign.

MOA/MOU Agreements:

- Can be used to employ personnel, perform administrative activities, purchase and/or share equipment
- Can initiate cooperative efforts and relationships
- Can be used instead of a standard contract and serves to simplify scope of work
- Can be like a contract but do not have to carry the same legal weight
- Are not always intended to be used as a legally enforceable arrangement

*EXAMPLE #1*

Cuyahoga County Board of Health: Storm Water Program<sup>4</sup>

*Bi-lateral, Fee-for-Service*

In 2002, the Cuyahoga County Board of Health (CCBH) in Ohio initiated a regional program to assist its 55 regulated Phase II communities. The Ohio Phase II regulations required designated communities to develop and implement a Storm Water Management Program (SWMP). The Northeast Ohio Storm Water Task Force was developed to provide guidance to the Phase II communities. Many different organizations and agencies participated in the Task Force to provide a model storm water management program.

In 2003, the CCBH developed a program to provide storm water-related services to their communities. The program initially included an outfall inventory of all designated MS4s and inspection and sampling of these outfalls. The first year, the CCBH contracted with four communities to provide these services. Since then, they have been able to increase the amount of activities and services they provide to include a source tracking component for illicit discharges as well as a public outreach program. The CCBH has inventoried 36 communities and has 45 contracts in place to provide continued inspection and sampling of MS4 outfalls on a yearly basis. Communities can enter into an agreement with the Board of Health to perform a variety of storm water activities:

- Inventory of designated MS4 outfalls
- Inventory and mapping of all catch basin and storm sewer manholes
- Dry weather inspections
- Sampling of dry weather flows
- Source tracking to locate possible illicit discharges
- Public education and public involvement
- Good housekeeping/pollution prevention for municipal operations

See Appendix C, pages 7 and 9, for examples of agreements that Cuyahoga County has established with its communities for various activities.

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<sup>4</sup> Information gathered through correspondence with Cuyahoga County Board of Health, May 2009

## *EXAMPLE #2*

### Storm Water Management for the Rouge River – Wayne County, Michigan

The Rouge River National Wet Weather Demonstration Project, developed in 1993, was initially developed to control Combined Sewer Overflows (CSOs) in the older urban core portions of the Rouge watershed. Additional monitoring conducted through this project showed that other sources of pollution such as industrial and municipal point sources, storm water runoff, and illicit connections all contributed to the contamination of the river. The program was eventually expanded to include the impacts of all sources of pollution and use impairments in receiving waters. The Rouge Project provides a unique opportunity for using a watershed-wide, cooperative, locally-based approach to restoring and protecting an urban river system.

At the heart of the watershed-based approach in the Rouge River watershed is Michigan's General Storm Water Permit. In 1995, the Michigan Department of Environmental Quality (MDEQ), the Rouge Project, and Rouge communities jointly developed an innovative watershed-based general permit for municipal storm water discharges. Issued in 1997, the General Permit was "voluntary" meaning that there was no legal requirement for most storm sewers to have a permit at that point in time. In recent years, the MDEQ developed two general permit options for discharges of storm water. The Jurisdictional Storm Water General Permit contains prescriptive storm water control measures within the jurisdiction of the permittee. The Watershed-based Storm Water General Permit addresses the same basic requirements as the Jurisdictional Storm Water General Permit but provides greater flexibility in how the basic requirements are selected and implemented. It also requires cooperative interaction among entities outside of the permittees jurisdiction. This cooperative approach is designed to accomplish storm water quality improvements in an entire watershed and provide benefits of cost sharing among entities.

### The Alliance of Rouge Communities

#### *Multi-lateral, Joint-Service*

The Alliance of Rouge Communities (ARC) is a voluntary public watershed entity covering the Rouge River watershed area. The ARC is currently comprised of 40 municipal governments, three counties, and the Wayne County Airport Authority. Officially formed in 2006, the ARC members represent public agencies with water management responsibilities whose jurisdictional boundaries are totally or in part located within the Rouge River Watershed located in southeast Michigan. In August of 2003, a Memorandum of Agreement (MOA) was adopted by the Rouge River watershed communities and counties to guide a regional effort over a three-year period to

address watershed-wide water quality/quantity issues. See Appendix C, page 11, for a copy of this agreement. The MOA was developed in response to declining federal grant funds to Wayne County for the Rouge River National Wet Weather Demonstration Project.

### **3.1.3 Mutual Aid Agreements (MAA)**

A Mutual Aid Agreement is a written agreement between agencies and/or jurisdictions to which they agree to provide mutual aid and assistance. Mutual Aid Agreements imply that support will be provided if the jurisdiction providing the assistance is available at the time of the emergency. As specified in Section 791.027 of the Interlocal Cooperation Act, *“a local government may provide emergency assistance to another local government, whether or not they have previously agreed or contracted to provide the assistance.”* In Section 418.004, Texas Government Code, *“mutual aid”* is defined as *“a homeland security activity...performed under the system or a written mutual aid agreement.”* Section 421.001, Texas Government Code, states that a *“homeland security activity”* can be *“any activity related to the prevention or discovery of, response to, or recovery from a terrorist attack, natural or man-made disaster, hostile military or paramilitary action, or extraordinary law enforcement emergency.”*

Mutual Aid Agreements:

- Can be imprecise in designating resources and capabilities
- Can be used to provide materials and services voluntarily with the intent that there will be a reciprocal exchange, if and when needed
- Can specify when services would not result in profit to providing party
- Typically do not involve an exchange of funds
- Can support protecting lives and property
- Can provide mechanism for coping with emergency situations
- Can allow maximum flexibility in the use of resources
- Can specify that providing jurisdiction may withhold all or part of their resources under certain conditions

## EXAMPLE #1

### Texas Water/Wastewater Agency Response Network – TXWARN

#### *Multi-lateral, Standby*

An example of a mutual aid assistance program in place is the Texas Water/Wastewater Response Network or TXWARN. TXWARN was created in December of 2005 after Hurricanes Katrina and Rita illustrated how difficult it could be for utilities to assist each other in disaster recovery efforts. The TXWARN network is available to provide mutual aid whenever a significant service interruption may require assistance beyond a local utility's immediately available resources. TXWARN has a resource database available to members that can help them locate specialized emergency equipment (pumps, generators, chlorinators, evacuators) that they would possibly need during an emergency.

In 2007, the state legislature amended *Texas Government Code Chapter 418: Emergency Management* and created the Statewide Mutual Aid Agreement to be used by all public entities and water utilities. See Appendix C, page 28, for a copy of this agreement. Subchapter E-1 Section 418.111 states that *“the Texas Statewide Mutual Aid System is established to provide integrated statewide mutual aid response capability between local government entities without a written mutual aid agreement.”* It also states that *“a request for mutual aid assistance between local government entities is considered to be made under the “system”, unless the requesting and responding entities are parties to a written mutual aid agreement in effect when the request is made.”* Private entities are not covered by the new legislation and must complete and sign the TXWARN Mutual Aid Agreement to receive assistance from the TXWARN member utilities.

#### **3.1.4 Interlocal Agreements (ILA)**

An Interlocal Agreement is used to permit local jurisdictions to make the most efficient use of their powers by enabling them to cooperate with other local jurisdictions on a basis of mutual advantage. With an Interlocal Agreement, specific services are agreed upon to be provided under defined conditions. Interlocal Agreements are more or less like a contract and are typically used for legal arrangements. Interlocal Agreements can be based on principles and concepts of contract law and failure to provide the specified services in the agreement can constitute a breach of contract.

## Interlocal Agreements:

- Can be very precise and identify a specific service or activity
- Can emphasize fulfilling terms rather than protecting lives and property
- Can specify payment for services and activities
- Can identify specific costs of clearly defined resources, materials, or services
- Typically deal with day-to-day services or activities
- Do not provide a flexible mechanism to respond to unusual situations not identified in scope of agreement

### *EXAMPLE #1*

#### South County Storm Water Quality Coalition<sup>5</sup>

##### *Multi-lateral, Fee-for-Service*

The Cities of Port Neches, Nederland, Groves, Port Arthur as well as Jefferson County and the Jefferson County Drainage District No. 7 are all participants in the South County Storm Water Quality Coalition. All six of these participants submitted their Storm Water Management Programs (SWMP) together and are working cooperatively as a coalition during the TPDES Phase II MS4 permit implementation process. In 2008, the Coalition approved the establishment of an Interlocal Agreement for the implementation of a regional storm water management program. This ILA does not include any specific legal provisions. Andre' Wimer, City Manager of Port Neches, has explained that the reason why the Interlocal Agreement is organized in this way is due to the fact that all of the participating entities have been working together for many years, and they have established very close, trustworthy relationships with one another. See Appendix C, page 38, for a copy of this Interlocal Agreement. To implement and manage this program, the Coalition contracted with a consulting firm to conduct the necessary implementation tasks in order to comply with the requirements of the permit. The consultant conducts frequent Coalition meetings for all participants to meet and discuss the progress of the implementation tasks. These implementation tasks include but are not limited to developing public education materials (i.e. brochures, flyers, PSAs), facilitating public meetings to discuss program status and ordinances, performing field work such as dry weather field screening at outfalls, updating outfall inventory maps, developing a construction/post construction guidance manual, conducting municipal employee training and preparing annual reports. The costs of the program are split equally among the Coalition participants.

<sup>5</sup> Information gathered through conversation with Andre' Wimer, City Manager of Port Neches, Texas, March 2009.

*EXAMPLE #2*

Northern Kentucky Regional Storm Water Program

*Multi-lateral, Joint-Service*

The Sanitation District No. 1 (District), which is an existing wastewater management agency serving a three-county area in northern Kentucky, has developed a regional storm water program to assist its 37 co-permittees (33 cities, 3 counties, and the Kentucky Transportation Cabinet) with compliance of the Kentucky Pollution Discharge Elimination System (KPDES) Phase II MS4 permit. The Kentucky Division of Water (KDOW) has been delegated by the Environmental Protection Agency (EPA) as the state permitting authority.

The communities within Northern Kentucky determined that the most cost-effective and efficient approach for addressing local storm water management issues, including compliance with the Phase II storm water requirements, was to develop and implement a regional approach under the guidance of one single entity, Sanitation District No. 1. This regional approach was formalized through the development and adoption of an Interlocal Agreement. This agreement also established the foundation for the District to develop and submit a Storm Water Management Program (SWMP) to KDOW on behalf of its 37 co-permittees. As specified in the agreement, the activities of the District are financed by a Storm Water Surcharge as well as through the collection of plan reviews and inspection fees.

As part of the MS4 permit and the SWMP, the District is required to implement the proper regulations necessary to prohibit illicit discharges. The District investigated the legal authority to establish and enforce ordinances and found that the Interlocal Agreement provided sufficient legal authority for the District to incorporate prohibition of illicit discharges; thus, the individual cities and counties would not have to adopt separate ordinances on their own. See Appendix C, page 39, for a copy of this Interlocal Agreement.

### EXAMPLE #3

#### Regional Management Program: City of San Antonio, Bexar County, San Antonio River Authority

##### *Multi-lateral, Joint-Service*

After experiencing two major flood events in four years, the Bexar County community decided to explore ways to improve the effectiveness of existing flood control, storm water management and water quality programs. In 2002, three major entities (Bexar County, the City of San Antonio, and the San Antonio River Authority) established a partnership through an Interlocal Agreement which set up the program management and oversight, established program deliverables, and defined the responsibilities of each participating entity. It also provided an opportunity to collectively measure and evaluate the quality of services delivered to the citizens of Bexar County. See Appendix C, page 47, for a copy of the Interlocal Agreement for this program. As a program deliverable, a Watershed Master Plan was developed to establish goals, objectives, performance standards, and best management practices to guide the management and implementation of the Regional Management Program. The master plan addressed the need to link the Regional Management Program with existing local ordinances and state and federal laws to achieve consistency. As specified in the agreement, the initial Watershed Master Plan was completed within one year of the execution of the agreement and is updated periodically.

Some of the program benefits identified by the participating entities through working together with the community are:

- Reduce unnecessary duplication among public entities
- Apply public manpower and financial resources more effectively through coordination
- Collect and analyze data on flood and storm water flow to enhance flood warning, water quality, and land use planning
- Standardize design, operations, and maintenance for flood control and water quality projects
- Integrate activities to comply with federal and state requirements and promote a unified approach to seeking state and federal funding
- Create a coordinated public communication, education, and participation program

#### EXAMPLE #4

##### eCityGov Alliance

###### *Multi-lateral, Joint-Service*

The eCityGov Alliance is a group of nine Washington cities in the Puget Sound region that have committed to partnering together to provide online services and information to customers. The eCityGov Alliance was created in 2001 with the development of an Interlocal Agreement (See Appendix C, page 68). The objectives of this group are to provide convenient service and information for residents, businesses, and visitors. Current services include online building permit requests, construction tip sheets, an up-to-date searchable index of commercial property, a recreational activity search across participating jurisdictions, and an interactive geographic information systems (GIS) mapping service. The Alliance operates through membership fees at various levels. The Alliance has developed service-specific portals to direct customers to interested areas of service. The eCityGov Alliance of Washington can be accessed at [www.ecitygov.net](http://www.ecitygov.net).

Descriptions of these portals are below:

- [MyBuildingPermit.com](http://MyBuildingPermit.com) – This portal makes it possible to apply for, pay for, and receive electrical, low voltage, mechanical, plumbing, and re-roof permits. The entities involved have worked together to share information, agree upon standards, and pool resources to accomplish similar needs. They also have created easy-to-read bulletins, (e.g. construction tips, inspection checklists, code interpretation guidelines) adopted common ordinances, provided co-sponsored trainings, and partnered with businesses in the community.
- [MyParksandRecreation.com](http://MyParksandRecreation.com) – This portal allows citizens to search for sports, recreation, parks, trails, and entertainment in the participating alliance communities.
- [NWMaps.net](http://NWMaps.net) – This portal allows users to search for zoning, demographic or tax reports and maps of property. Users also have the option of opening a GIS mapping browser and adding layers to the maps to display certain information such as floodplains, zip code areas, or streets. This portal also includes the ability to search on a specific parcel or address and access information about the neighborhood area, nearby schools, and the nearest fire and police facilities.

- [NWProperty.net](http://NWProperty.net) – This portal gives a comprehensive listing of commercial property for sale and lease, demographic reports, and public data for the participating entities involved.
- [WAGovBiz.net](http://WAGovBiz.net) ([sharedprocurementportal.com](http://sharedprocurementportal.com)) – This portal consolidates procurement services to make it easier for government and businesses to work together.
- [GovJobsToday.com](http://GovJobsToday.com) – This portal is available for job-seekers to view and apply for public sector jobs in the Puget Sound region at one convenient location. Users are able to create a profile and monitor the status of their application.

**TABLE 1: AGREEMENT COMPARISON**

Type of Agreement	Descriptions	Advantages	Disadvantages
Handshake (Gentlemen's) Agreements	<ul style="list-style-type: none"> <li>• Informal, unwritten</li> <li>• Formed through conversation or handshake</li> <li>• Do not typically involve governing body</li> </ul>	<ul style="list-style-type: none"> <li>• Simple and limited in scope</li> <li>• Used when no formal or lasting commitment is required</li> </ul>	<ul style="list-style-type: none"> <li>• Due to informality, can be threatening to parties</li> <li>• Can overlook major provisions such as liability, duration and termination conditions, and payment</li> </ul>
MOA/MOU	<ul style="list-style-type: none"> <li>• Formal, written</li> <li>• No legal difference between terms and can be interchangeable</li> <li>• Not always intended to be used as a legally enforceable arrangement</li> </ul>	<ul style="list-style-type: none"> <li>• Can be like a contract but does not have to carry the same legal weight</li> <li>• Can be specific or general</li> <li>• Can include any or all of the standard contract terms and conditions</li> </ul>	<ul style="list-style-type: none"> <li>• Flexibility can cause parties to have difficulty agreeing on terms in a timely manner</li> <li>• Legal staff need to be involved in some cases</li> </ul>
Mutual Aid Agreements	<ul style="list-style-type: none"> <li>• Formal, written</li> <li>• Used to provide mutual emergency aid and assistance</li> <li>• Can be imprecise in designating resources and capabilities</li> </ul>	<ul style="list-style-type: none"> <li>• Typically do not involve an exchange of funds</li> <li>• Allow flexibility in the use of resources</li> <li>• Resources are typically voluntarily provided</li> </ul>	<ul style="list-style-type: none"> <li>• Providing parties may withhold all or part of their resources under certain conditions</li> </ul>
Interlocal Agreements	<ul style="list-style-type: none"> <li>• Formal, written</li> <li>• Emphasize fulfilling terms rather than protecting lives and property</li> <li>• Typically deal with day-to-day services or activities</li> </ul>	<ul style="list-style-type: none"> <li>• Can be very precise and specific</li> <li>• Can identify specific costs of clearly defined resources, materials, or services</li> </ul>	<ul style="list-style-type: none"> <li>• Failure to provide service would constitute breach of contract</li> <li>• Do not allow flexibility in unusual situations</li> </ul>

## 4.0 BENEFITS and LIMITATIONS OF COOPERATION<sup>6</sup>

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There are pros and cons to every cooperative relationship. It is important to be aware of these from the very beginning so as to either build from them or deal with any issues appropriately. Cooperative relationships give local governments the opportunity to work together to provide services that they would not be able to normally do alone. When it comes to complying with storm water permit regulations, many local governments have found that they can collaborate on many different activities to do their job more efficiently and save money in the process. Examples of some of the benefits and limitations of cooperation are listed below:

### 4.1 Benefits

- Improve Services – By partnering, jurisdictions can afford to provide the highest quality services to their residents.
- Increase Affordability – Municipal partnerships allow a jurisdiction to provide a service that it would not be able to afford alone.
- Reduce Costs – By eliminating duplication of support services and overhead, the cost to each partner jurisdiction may be reduced.
- Expand Scale of Service – A fundamental principle of economics is that the unit cost of a product or service will be lower, if the volume of the product or service being produced goes up. By including the orders of several jurisdictions, a purchasing agent such as COG can lower the unit cost and reduce purchasing expenses for all parties involved.
- Share Specialized Equipment and Facilities – By sharing expensive equipment, facilities, and personnel several jurisdictions can benefit. In some circumstances, the total costs would not be affordable to a single partner; a partnership avoids the costs of separately owning specialized assets that are used on occasion.
- Achieve a Closer Match Between Revenues, Service Delivery, and the Geographic Service Area – It is not uncommon to find that services and the resources supporting the services do not exactly fit the geographic service area. In many circumstances, drainage basins and transportation systems frequently encompass multiple jurisdictions. To address this issue, jurisdictions can combine their services and revenues to achieve a better geographic fit for their citizens.
- Meet Regulatory Requirements – Local governments can use cooperative agreements to address permit requirements. Some entities may use cooperative agreements

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<sup>6</sup>*Forming Successful Partnerships: A Practical Guide for Local Governments*, Association of Washington Cities, 2006;  
*Municipal Cooperation Guide*, Municipal Research Services Center of Washington, September 1993

because they lack certain resources to meet their goals. Others may need to cooperate in order to establish some level of authority to prohibit non-storm water discharges from entering their storm drainage system. An example of this arrangement would be a transportation agency and/or county and a municipality. For MS4s, cooperation along their shared borders may be essential to affect water quality of a watershed that spans multiple jurisdictions.

- Reduce Liability – The larger scale of services made possible by municipal partnerships enables jurisdictions to afford more highly trained and specialized people, and risks may be more effectively managed. Liability may also be transferred to the contractor agency or shared among partners.
- Heighten Cooperation – The process of putting a partnership together often enhances trust, improves services, and increases efficiency. The relationships and principles established often pave the way to a broadened partnership involving other services.

## 4.2 Limitations

- Poorly Drafted Agreements - Poorly drafted agreements which do not provide adequate definitions of expected service levels and contractor responsibilities can cause friction and misunderstanding between participating jurisdictions.
- Fragmentation of Service Delivery - Assigning functions to another agency detaches the service from a unified organization. Clearly drawn contract specifications may somewhat reduce this problem.
- Equal Distribution of Costs among Participants - It may be difficult to distribute costs and services equally among participating agencies.
- Computing Overhead Costs - Retirement, insurance, and other overhead costs may be difficult to compute and distribute.
- Transfer of Work - Personnel dislocations are sometimes part of cooperative involvement. This is particularly true if a service that is being contracted out has traditionally been performed by city employees. This naturally can cause employees to have job security concerns.
- Accountability - There is sometimes a temptation for managers and elected officials of receiving jurisdictions to feel less responsible for the service than the jurisdictions that provide the service with their own resources.
- Quality of Service - The citizens of the receiving jurisdiction do not always get the same quality of service as the citizens of the providing jurisdiction.

- **Flexibility** - When conditions change or an unexpected event occurs, jurisdictions that plan and organize a service or function on their own tend to feel that they have more flexibility in how they respond. However, if a service is being contracted out and something happens, the providing agency has the right to refuse to do anything that is not included in the contract.

## **5.0 FORMING SUCCESSFUL PARTNERSHIPS <sup>7</sup>**

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The following are some general guidelines to follow when assessing the potential of a cooperative relationship:

### **5.1 Discovering Partnership Opportunities**

Partnerships are often a result of a crisis, such as a revenue shortfall, that threatens the continuation of a service or program. A partnership will give a service or program the opportunity to survive but identifying ways to cut costs or improve services should be done before the crisis arises.

Here is a quick and simple way to explore and discover partnership opportunities:

#### **Make a List of Services Your Jurisdiction Provides**

This list can include services that are not currently provided but have been desirable. Add internal services to the list (e.g. billing, purchasing, building maintenance). Looking through the budget may help identify these, and it is also useful to take a look at those services commonly delivered through public or private agreements (e.g. solid waste disposal, recycling, building permits, law enforcement, water, or sewer treatment).

#### **Review List, Note Partnership Benefits**

Next, review the list of partnership benefits. Make a few notes of each service reflecting your preliminary guess of the potential benefits that might be achieved. Assume for now that willing and qualified partners are available.

#### **Note Expectations**

Then, revisit each service on your list and note your expectations of the likely concerns that will come up.

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<sup>7</sup> *Forming Successful Partnerships: A Practical Guide for Local Governments*, Association of Washington Cities, 2006; *Mutual Aid and Interlocal Agreement Handbook*, Washington Military Department, January 2001

### Eliminate Marginal Options

Now, make a third pass through the list, reviewing your notes and crossing off those services in which the apparent difficulties involved in providing that service through a partnership far outweigh the potential payoffs. At this point, leave the marginal opportunities on the list.

### Review Potential Partners with Colleagues, Brainstorm

Meet with your colleagues to review what you have done so far. Then brainstorm as a group about each service remaining on your list, focusing on potential partnerships. Assess current levels of service, levels of customer satisfaction, technological advances, citizen needs, costs, and possible prospective partners, public and private.

### Identify Potential Partners

Then, eliminate by consensus those that seem, for one reason or another, not to be worth the effort to explore further.

## **5.2 Sizing Up Potential Partners**

Below are five criteria for identifying the potential for the most productive and successful partnerships:

### Service Capability

Does the potential partner have the ability to deliver the level and quality of service you need? At this early stage of assessment, this is largely a matter of reputation based on past performance. Do not automatically eliminate a prospect because that agency's current level of service falls short. The inclusion of revenues from the partnership may enable greater service. If you are seeking a provider partner, the capacity to deliver quality service is critical. However, if your jurisdiction is looking for recipient partners for services you will provide, this may be unimportant.

### Proximity

For some services, like accounts receivable and billing, the service provider can be virtually anywhere; but a joint emergency service for example requires close proximity.

### Staff Availability

Does the prospect have staff available who are up to the task of negotiating an equitable contract? This will involve working together to examine alternatives, policies, costs of service, liability, governance, future budgeting, etc. Some service arrangements can be fairly simple

such as contracting with a county or neighboring city to do road improvements. This requires little cost accounting and alternative analysis. More complex arrangements such as for wastewater treatment or computer systems typically require more extensive analysis. If the prospective partner lacks the expertise for the discussions, it will be difficult to make progress towards a partnership, unless a trusted third party can be found to provide assistance.

### Cost Accounting

Organizations that know their costs make better partners. Negotiations are smoother when good unit cost data is available. When credible cost information is lacking, each party naturally thinks the other is getting a better deal. This not only harms the initial negotiation, but also effects further discussions whenever price adjustments are proposed. Although still relatively uncommon in local government, service unit cost accounting is rapidly becoming recognized as essential not only for partnerships, but also to strengthen cost controls. (See page 25, Estimating Costs of Service)

### Relationships and Politics

Productive leaders avoid taking things personally and carrying a disagreement on one issue into others. Indeed service partnerships sometimes provide less controversial ground upon which relations can be improved. At the same time, if the key people who must ultimately agree on the partnership simply do not trust one another, it may be best to look elsewhere for a partner.

## **5.3 Exploring Promising Prospects**

After taking a preliminary look at your services and prospective partners, you should have been able to select the most promising prospects for deeper examination. A feasibility analysis of those remaining will determine whether negotiations are likely to succeed.

### Meet with Your Counterpart in Partnering Jurisdiction

Create a working group of key personnel who must be involved in drafting an agreement. Involve those individuals who have the authority and interest to enter into an agreement for that jurisdiction.

- Review what you have done so far
- Agree that any arrangement must be beneficial to all partners
- Determine initial interest in further analysis
- Jointly outline a preliminary work plan for feasibility analysis
- Share available information about the relevant costs of service of each jurisdiction

- Involve elected officials to ensure that they are supportive from the beginning

#### Form a Group for Feasibility Analysis

- Include all potential partnering jurisdictions in the initial planning/brainstorming process
- Include the desired expertise and leadership from the jurisdictions involved, some of whom may be citizens
- Keep the group small enough to work together efficiently (no more than fifteen)
- Include the person who will be responsible for drafting the language of the agreement
- Involve staff whose jobs or responsibilities may be affected by the proposed cooperative program

#### Jointly Answer the Following Questions

- Can the provider jurisdiction deliver service at the level desired by the recipient?
- Can the provider deliver the service in the recipient's service area?
- Will the partnership require personnel transfers or layoffs? If so, are there labor agreement requirements? Are there feasible means to satisfy these requirements?
- What are the preliminary estimates of the direct and indirect costs of the provider agency to provide the service?
- What is the preliminary estimate of the cost of service the provider would have to recover?
- Is this amount significantly less than the recipient's current cost of service?
- Are there sufficient resources available to develop and sustain the relationship?
- What form of partnership appears most promising?
- Will an agreement affect the qualifications for any federal or state funding?
- What are the potential benefits to each organization?

#### Summarize Your Findings

Decide whether or not further examination and negotiations are likely to be fruitful.

## 5.4 Negotiating and Coordinating the Agreement

Cooperative partners must collaborate from the very beginning, in complete openness and trust, focusing on producing benefits for all members of the partnership. Here are a few ways to promote collaborative negotiations:

### Focus on Interests, not Positions

Traditional negotiations are positional and adversarial. The parties involved in traditional negotiation usually take a stance, and the negotiations are all about coming to a compromise. In contrast, collaborative negotiations are interest-based. The focus is on understanding the interests of the parties, and the goal is to maximize satisfaction of the interests among everyone involved.

### Ground Rules

Talk through the collaborative process at the outset. Agree on a set of ground rules to guide negotiations. The ground rules might deal with everything from open information to press procedures to behavioral guidelines. The key is to understand and agree on the collaborative approach and goals. The task is to shift from teams with opposing views, to a work group of problem solvers sitting around a table to achieve a common goal.

### Encourage Creative Ideas

Work together to discover as many ideas for solutions as possible. (Here, “solutions” are defined as anything that might help satisfy an interest or need.) Use group brainstorming techniques to maximize creative thinking before evaluating ideas. After all the solutions are listed, examine each suggestion as a team, evaluating the potential for each to satisfy an interest of at least one party. Note any possible negative effects on other interests. Agree to eliminate ideas that present more problems than solutions. Retain those that show promise for further development.

### Develop Solutions and Estimate Costs of Service

Develop those elements that appear promising. Estimate the costs to provide the service and the payments required to recover costs. Continue working until a tentative agreement is reached on the substantive elements of an agreement. It is generally best to defer legal contract language until an agreement has been tentatively reached on the substantive elements (solutions) of the agreement.

### Prepare a Draft Agreement

Identify a person to draft the agreement, and include them on the negotiation team early on. An attorney representing one of the parties (generally the providing jurisdiction) commonly assumes this role. It may also be an independent consultant. Assure that this person regularly confers with the attorneys representing each of the parties to avoid misunderstandings later, when the agreement is ready for their review. This person must also be committed to assisting the parties reach agreement, not just protecting their client. Many good collaborative agreements have failed due to attorneys entering late in the process and drafting a one-sided agreement. Adversarial conflict can then take over, and trust may be lost. Once a draft has been completed, give key officials the opportunity to make comments. If the key officials change any of the legal counsel comments, the revised document will need a second legal review.

### Prepare Final Copy for Signature

Provide a copy for signature to the appropriate officials of the parties to the agreement. Ensure that additional resolutions, ordinances, or other supplemental documents required to implement the agreement are passed or adopted.

### Exchange and File the Signed Agreement

Each participating party must follow necessary legal requirements to comply with local policy and submit executed copies to the appropriate personnel.

## **5.5 Interpreting the Agreement**

The language of the agreement should clearly reflect the intent of the local jurisdictions. It should say what the signatories want and intend to say. Questions may arise if two terms conflict, if a term is ambiguous, or if there is uncertainty about what a term means. The following rules of interpretation have been established to assist in formalizing the meaning of an agreement in these instances.

Common Sense – Common sense is the most important rule for interpreting agreements. The words and acts of the local jurisdictions should be able to be interpreted by any reasonable person standing in the place of the local jurisdictions at the time the agreement was executed.

Implied Legal Requirements – Though not written in the agreement documents, there are many other terms of an agreement implied by law. It is implied in every agreement that the local

jurisdictions are dealing with each other in good faith and cooperation. It is implicit that the local jurisdictions are in agreement and will do nothing contrary to the goals of the agreement.

Agreement Interpreted as a Whole – To interpret an agreement, it should be read as a whole document. Particular words, phrases, or clauses are not read and interpreted alone. If possible, all provisions of an agreement are interpreted to have a meaning in harmony.

Custom and Usage – Government practice may be used in interpreting the agreement unless there is an expressed or explicit term within the agreement in conflict with the asserted customary practice or usage of the term.

Precedence of Words and Terms – The agreement generally sets forth the precedence or importance to be accorded to words and terms in case a conflict exists. Where an agreement is made up of written, typed and printed terms and there is an inconsistency, the following order of precedence applies:

The written provisions take precedence over typewritten provisions and typewritten provisions take precedence over printed provisions. This order of precedence is established on the premise that it yields the most immediate language, which is normally the language that the parties last put into the agreement. As a general rule, where an agreement contains both general and special provisions relating to the same subject, the special provisions are controlling--unless the agreement states something to the contrary.

Ambiguities Construed Against Drafter – After applying the previous rules of interpretation, if the meaning of the agreement is still unclear, clarify the ambiguous language by consulting the original jurisdiction who drafted the language. This demonstrates the need for maintaining all correspondence.

Duty to Seek Clarification – A participating jurisdiction has the responsibility during the development phase to inquire about obvious ambiguities, omissions, or conflicts in the provisions.

## **5.6 Key Elements of a Partnership Agreement**

Refer to *Typical Provisions of Cooperative Agreements* on page 29 of this handbook.

## 5.7 Estimating Costs of Service

It is not uncommon to have all the ingredients for a productive partnership – able and eager partners, identified service efficiencies, compatible policies, and goodwill – yet agreement stalls over the price to be paid for the services. For this reason, credible and understandable estimates of the costs to provide the services are a critical milestone on the path to a successful partnership. Here are some general principles to follow when estimating the costs of services for a cooperative partnership:

### Principles

- Public agencies should provide services to partner jurisdictions at the best estimated cost of service, without subsidy or profit. Occasionally, provider agencies are seen as making a profit if they are financially better off with the partnership than before. Yet service agreements are intended to increase efficiency and generally do so through spreading fixed costs over a greater number of service units. Be careful not to confuse the provider's share of increased efficiency with an apparent profit.
- The provider agency is ultimately responsible for estimating costs of service and for setting the amounts to be charged to recipients. Estimates and calculations should be open and understandable. Ideally, development of the estimates is accomplished together, with meaningful participation by all parties.
- Direct and indirect costs of service should be explicitly itemized.
- Cost accounting methods should be practical and not exceed the task at hand. Legions of cost accountants could be employed to refine cost estimates for negotiating local service agreements without increasing the chance of agreement. Pushing cost accounting to extremes is likely to damage trust and drive most people crazy.

### Variable and Fixed Costs

Some costs vary in direct proportion to the level of activity or service. These are *variable costs*. *Fixed costs*, on the other hand, remain essentially unchanged in total as the level of activity or service changes.

### Direct and Indirect Costs

Correctly allocating costs to services (as well as controlling costs) is facilitated by tracing costs to the department or work center in which the cost was incurred. Such tracing of costs, known as *responsibility accounting*, is important to determine which costs should be recovered for delivering a particular service. A cost that can be traced to a particular work center or

department is called a *direct cost*. A cost that is not directly linked to a particular work center or department is called an *indirect cost*. Commonly termed “overhead,” indirect costs are the costs of all those things that are necessary to the functioning of the organization, but are not traceable to production of a particular service or product. For example, the city’s liability insurance premium is an indirect cost of each of the city departments.

### Significance of Cost Estimates

It is important to discuss cost estimating principles because negotiating partnerships requires estimating the costs of services and providing for payment to the provider. Also, service agreements often involve a service performed by a portion of a department – a work center within a department. Negotiations often stumble because recipient agency representatives tend to think the provider’s costs are only the direct costs of the work center that performs the service. Provider representatives believe that the organization’s indirect costs are every bit as necessary to deliver services as direct costs and should also be recovered from the recipient jurisdictions. Unless the parties have some understanding of the concepts of fixed and variable costs, and direct and indirect costs, the payment issue is difficult to resolve. Some jurisdictions commonly assist each other without the expectation of payment; however some jurisdictions provide substantial or ongoing services to other agencies, and it is justified to expect to recover the costs necessary to deliver those services.

## **5.8 Implementing the New Partnership**

Once the agreement is complete, a thoughtful, well-planned launch will help the new arrangement start smoothly and build the foundation for a lasting success.

### Celebrate the Signing

A formal signing ceremony, officially recognizing the participants, will help raise public awareness of the achievement and build understanding of its purposes with those who now must see it through.

### No Surprises

Do not wait until the deal is done to figure out what has to happen to make it work. Everything about the transition should have been thoroughly discussed and decided with the involvement of the affected people during consideration of the partnership. Thus, the employee, equipment, facility and accounting changes required to make the transition are already known and detailed in the transition plan. The understanding and trust required for day-to-day management of the partnership depend on doing this very well.

### Proceed at a Human Pace

For most people, change is difficult, especially when it affects their personal self–esteem, social circle, wealth, power or daily routine. You can help people be ready to change by involving them meaningfully in planning for the transition, keeping them in the communication loop, and assuring that each step is made on solid footing before taking the next. Publicly celebrate important milestones to help maintain momentum. If new procedures, equipment, or systems are involved, assure installations and staff training is accomplished well ahead of crunch time for critical functions.

### Monitor Closely

Few things go exactly as planned. All the assumptions used in developing the partnership and estimating costs will be tested. The benefits envisioned will not be realized unless service quality and costs are controlled and problems are promptly solved. Ensure that problems are quickly brought forward and solved. On complex projects, a cross–functional implementation team is a powerful means to stay on top of the transition and to troubleshoot effectively.

### Follow Up to Celebrate, Evaluate, and Adjust

Celebrate milestones, evaluate performance, and make whatever adjustments are necessary to ensure ongoing success.

## **5.9 Managing the Partnership**

After the new service arrangement is set in motion, and the recipient agency has successfully transferred the financial and administrative burdens to the provider, the recipient agency remains responsible to its citizens for the quality of service. Citizens still lodge their complaints with their own elected officials, and there will likely be some public confusion about which agency is doing what. Concerns will likely raise their heads during the first year of a new partnership. By anticipating them and taking steps to minimize their effects, conflicts and confusion can be held to a minimum.

### Handling Complaints

Handling of complaints will greatly affect the public’s opinion of the new arrangement. Be certain you have a clear and efficient procedure to help get these resolved quickly and decisively. The process should keep the recipient jurisdiction in the loop, while allowing citizens to complain to their own government and still achieve prompt resolution.

### Setting Standards of Service

Service standards are essential for evaluation. If they are not spelled out in the agreement, they must be developed separately. Such standards of performance provide the definition of the level and quality of service the provider has agreed to deliver and that the recipient agency expects to receive. Without clear standards, communications about performance will be unproductive and the relationship will suffer. These standards can include the frequency and areas of law enforcement patrol, minimum training and certification of personnel, hours of service, and public outreach and education efforts.

### Issuing Reports and Evaluations

Reports and evaluations of service performance should formalize verbal communications. Regular informal meetings with key partner representatives should discuss contract performance and problems encountered. The providing agency's department director, who is responsible for delivering an important service, should be included in management meetings of the recipient jurisdiction. Mutual respect and communication – the bedrock of any relationship – are crucial to intergovernmental dealings.

## 6.0 TYPICAL PROVISIONS OF COOPERATIVE AGREEMENTS<sup>8</sup>

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The provisions in an agreement determine the legal weight of the agreement. Depending on the relationship of the parties involved, some choose not to make the agreement legally binding. Oftentimes, when a trusting relationship has already been established, the parties will primarily address who is involved, what is expected, and how costs will be distributed. The Interlocal Agreement between the participants of the South County Storm Water Quality Coalition was developed as a result of a trusting, cooperative relationship. See Appendix C, page 38 to see their most recent Interlocal Agreement.

The following provisions have been grouped into ten specific categories: identification of parties and purposes; description of work to be performed; explanation of contract limitations; financing; administration; fiscal procedures; personnel matters; property arrangements; duration, termination and amendment; and miscellaneous provisions. Sample language from existing agreements has been provided below each provision description.

### 6.1 Identification of Parties and Purposes

- Identify parties and their legal relationships
- Describe nature of service or function
- Explain desirability of the undertaking
- Cite the legal authority
- Define terms, as necessary

Participating Parties – A precise description of the jurisdictions and/or private corporations entering into such an agreement along with the terms to be used to describe the entity throughout the document (i.e. the assisting and assisted jurisdictions).

#### **SAMPLE PARTICIPATING PARTIES PROVISION**

*This agreement is made and entered into this day of July 1, 2000 by and between the City of Fredericksburg and Sycamore County, state of Washington.*

Preamble to the Agreement – A brief description of the agreement including the background, need, purpose, and what the agreement will provide (i.e. an executive summary).

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<sup>8</sup> *Mutual Aid and Interlocal Agreement Handbook*, Washington Military Department, January 2001, *Durable Partnerships in Texas: The Interlocal Contract at Mid-Decade*, University of Texas at Arlington, 1995.

**SAMPLE PREAMBLE TO THE AGREEMENT PROVISION**

- 1. The Abelmard Planning Commission (Abelmard) is a Texas regional planning commission created and operating under Chapter 391 of the Local Government Code. Abelmard has developed a plan to establish and operate an Emergency 9-1-1 service in State Planning Region 12, and the Advisory Commission on State Emergency Communications has approved the plan.*
- 2. Charlotte County (County) is a Texas county participating in the E 9-1-1 plan as authorized by Chapter 771 of the Health and Safety Code. The County agrees to assign addresses to residences, as authorized by Article 6702-1 of the Revised Civil Statutes, so the County may enhance its E 9-1-1 system to include the Automatic Location Identification feature.*
- 3. This contract is entered into between Abelmard and the County under Chapter 791 of the Government Code.*

Preliminary – List of ordinances, resolutions, or executive orders implementing the agreement. Items are provided by all parties to the agreement and should be limited to one or two pages. For an Interlocal Agreement format, the preliminary section requires the identification of the parties to the agreement and provides a nonspecific purpose statement.

**SAMPLE PRELIMINARY PROVISION**

*This agreement shall be effective as to each party when the legislative body of each such party has approved the same resolution or ordinance or other action with the Washington State Military Department, Emergency Management Division. Said agreement shall be operative and binding until terminated by said participants.*

Authorization - Reference is made to applicable specific federal, state, and local laws, codes, statutes, ordinances, and/or resolutions.

**SAMPLE AUTHORIZATION PROVISION**

*An agreement of this nature is authorized under the state of Texas Government Code Chapter 791 Interlocal Cooperation Act.*

## 6.2 Description of Work to be Performed

- Explain in detail the service to be provided or joint undertaking
- Identify any boards, administrative agencies or third-party contractors and detail their powers and duties

Assistance to be Rendered – This includes a more detailed description of goods and services to be rendered by the participating jurisdictions and the standard of goods and services to be provided.

### **SAMPLE ASSISTANCE TO BE RENDERED PROVISION**

*Each party to this agreement shall develop a plan known as a Mutual Aid Operational Plan providing for the effective mobilization and utilization of its resources to manage with agreed types of emergencies or disasters. Such plans shall list the resources and service that can be made available by the parties to this agreement and shall indicate the method and manner by which such resources and services can be utilized by the other parties. Such plans shall also give the amount and manner of payment and/or compensation for the utilization of such resources and services.*

Purpose – A brief, but comprehensive summary of the assistance to be rendered.

### **SAMPLE PURPOSE PROVISION**

*To authorize the work of the Western New York Stormwater Coalition whose purpose it is to work collectively to:*

- Facilitate the use of existing or future resources, organizations, and program for the provision of services necessary to comply with the requirement of the U.S. EPA Phase II Stormwater regulations...*
- Protect and/or improve the water quality of local surface water bodies (i.e. streams, rivers, lakes) in accordance with State, County, and local water quality regulations, planning documents and policies; and,*
- Research and implement appropriate funding mechanisms to meet the financial needs resulting from compliance with the Phase II Stormwater regulations; and,*
- Coordinate the preparation of a template for the Annual Report pursuant to GP-02-02 to the New York State Department of Environmental Conservation on behalf of all Coalition members.*

Request for Assistance – Description of the manner in which the requesting party will make their request and the designation of the official authorized to make the request.

**SAMPLE REQUEST FOR ASSISTANCE PROVISION**

*(A) Local Disaster. In the event of a local disaster declaration, the Emergency Management Director or the designated Emergency Management Coordinator of a Party seeking mutual aid shall make the request directly to the Party from whom aid is sought. A Party from whom mutual aid is sought shall furnish mutual aid to cope with the disaster to the requesting Party, subject to the terms of this Agreement. In the event of a widespread disaster affecting more than one Party hereto, each affected Party shall utilize its respective State of Texas Department of Public Safety Disaster District Committee for coordinating the provision of mutual aid.*

*B) Civil Emergency. If the presiding officer of the governing body of a Party is of the opinion that a state of civil emergency exists that requires assistance from another Party, the presiding officer of the Party requesting mutual aid shall make the request directly to the Party from which assistance is sought. Before the emergency assistance is provided, the governing body of the Party whose assistance has been requested shall authorize such assistance by resolution or other official action, in accordance with Chapter 791 of the Texas Government Code. In the event of a widespread civil emergency affecting more than one Party hereto, each affected Party shall utilize its respective State of Texas Department of Public Safety Disaster District Committee for coordinating the provision of mutual aid.*

### 6.3 Explanation of Contract Limitations

- Clarify any quality or quantity standards to be observed by the parties
- Indicate the need for compliance with federal or state regulations
- Spell out priorities for the use of space or equipment
- Include language that protects the right of one or both parties to perform for other parties not named in the agreement

Entire Agreement – States that the agreement is represented in its entirety and there are no other understandings in effect related to the subject of the agreement.

#### **SAMPLE ENTIRE AGREEMENT PROVISION**

*This agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind any of the parties hereto.*

Governing Law and Venue – Establishes that the laws of the State of Texas govern the agreement.

#### **SAMPLE GOVERNING LAW AND VENUE PROVISION**

*This agreement shall be governed by the laws of the State of Texas. Venue for an action arising under this agreement shall be in accordance with the Texas Rules of Civil Procedure.*

## 6.4 Financing

- Outline procedures for financing of services to be undertaken jointly by the parties
- Stipulate things to be covered in the overall cost of activities to be undertaken
- Stipulate the amount and/or basis on which payments will be made (e.g. population served, services received, capacity required, actual expenses incurred).
- Indicate the authority for acceptance of any grants or contributions
- If long-term financing is involved, explain the need for bond counsel, the types of bonds to be issued, and how debt is to be allocated among the parties

Funding – The amount of funds to be awarded to the contractor are included. It should permit the contractor to provide services but include a fiscal limit to maintain control of costs.

### **SAMPLE FUNDING PROVISION**

*The total funds to be reimbursed to the CONTRACTOR for the agreement period shall be a sum not to exceed twenty thousand dollars (\$20,000).*

Compensation – This is the local jurisdiction’s agreement to seek or not to seek compensation for the services and goods provided and for the losses incurred. Wages, materials, and equipment costs and in particular worker’s compensation should be addressed. For instance, if overtime costs are to be reimbursed, it should be clearly stated.

### **SAMPLE COMPENSATION PROVISION**

*The District will be compensated for its service as follows:*

- (1) The District will charge a Surcharge to all improved, non-agricultural parcels of property based on an Impervious Area Rate Methodology in the geographical area identified and designated by KDOW, which area includes all or part of the Local Government jurisdiction; and*
- (2) In addition to the Surcharge, the District will charge fees for reviewing development plans and for construction-site inspections to offset the cost of providing these services.*

Travel and Subsistence Reimbursement – Establishes the rate of reimbursement for travel and per diem performed in support of the agreement. Commonly the state travel regulations are cited.

**SAMPLE TRAVEL AND SUBSISTENCE REIMBURSEMENT PROVISION**

*In the absence of provisions included herein, travel expenses shall be paid in accordance with rates set pursuant to (Texas Code) as now existing or amended.*

Reimbursement or Payment Provisions – Details of how the contractor must claim their funds, the time period in which the claim may be processed and settled, and the last date by which a claim may be settled.

**SAMPLE REIMBURSEMENT OR PAYMENT PROVISIONS**

*The CONTRACTOR shall mail an invoice voucher to the CITY not later than fifteen (15) working days after the termination of the emergency or disaster. Within twenty (20) days after receiving the voucher, the CITY shall remit to the CONTRACTOR a warrant covering the cost of the prior agreed upon activities.*

## 6.5 Administration

- Identify clearly the administrative units responsible for supervising the contract
- Describe the manner in which notices are to be given and the person(s) representing each party to whom notices are to be sent
- Stipulate who is to exercise control over those who are to supply the service

Agreement Administration – This is a provision for administering the agreement and representing the local jurisdictions involved, along with any financing or budget requirements associated with the agreement.

### **SAMPLE AGREEMENT ADMINISTRATION PROVISION**

- a) CONTRACTOR'S representative shall be \_\_\_\_\_.
- b) CITY'S representative shall be \_\_\_\_\_.

Command, Control, Coordination and Communication Responsibilities – Conditions or procedures for implementing the agreement are described. The terms of the supervision and management of the personnel, equipment, and materials are specified.

### **SAMPLE COMMAND, CONTROL, COORDINATION AND COMMUNICATION RESPONSIBILITIES PROVISION**

*The personnel and equipment of the Assisting Utility shall remain, at all times, under the direct supervision and control of the designated supervisory personnel of the Assisting Utility. In instances where only equipment is provided by the Assisting Utility, the ownership of said equipment shall remain with the Assisting Utility and said equipment shall be returned to the Assisting Utility immediately upon request. Representatives of the Damaged Utility shall suggest Work assignments and schedules for the personnel of the Assisting Utility; however, the designated supervisory personnel of the Assisting Utility shall have the exclusive responsibility and authority for assigning work and establishing work schedules for the personnel of the Assisting Utility. The designated supervisory personnel shall maintain daily personnel time records and a log of equipment hours, be responsible for the operation and maintenance of the equipment furnished by the Assisting Utility, and report work progress to the Damaged Utility. The Damaged Utility must provide communications between the personnel of the Assisting Utility and the Damaged Utility.*

## 6.6 Fiscal Procedures

- Specify how and when payments are to be made and procedures for record keeping and reporting
- Provide for periodic review and adjustment of rates
- Spell out methods for preparing, submitting, and approving budget and the duties of those who receive or pay funds

Budget – A detailed statement and breakout of the total funds to be reimbursed to the contractor.

### **SAMPLE BUDGET STATEMENT**

#### *ATTACHMENT B: PROJECT BUDGET*

*The hourly rate to be reimbursed to the CONTRACTOR for public works equipment to include operators is:*

<i>D-6 Caterpillar</i>	<i>\$100</i>
<i>Road Grader</i>	<i>\$75</i>

*The CITY as an integral part of the agreement will provide fuel to the CONTRACTOR.*

Service Provision - There should also be a statement of how the funds are to be used. A more detailed Scope of Work should be attached.

### **SAMPLE SERVICE PROVISION**

- a) The CONTRACTOR shall use the funds solely for providing public works personnel and equipment upon request of the CITY during an emergency or disaster.*
- b) ATTACHMENT A, Statement of Work and ATTACHMENT B, Project Budget, are, by reference, incorporated into this agreement*

Evaluation and Monitoring – Defines the access the jurisdiction will have to the records and files of the contractor.

### **SAMPLE EVALUATION AND MONITORING PROVISION**

- a) The CONTRACTOR shall cooperate with and freely participate in any monitoring or evaluation activities conducted by the CITY that are pertinent to the intent of this agreement.*
- b) The CITY or the State Auditor or any of their representatives shall have full access to and the right to examine during normal business hours and as often as the CITY or the State Auditor may deem necessary, all of the CONTRACTOR'S records with respect to all matters*

*covered in this agreement. Such representatives shall be permitted to audit, examine and make excerpts or transcripts from such records and to make audits of all contracts, invoices, materials, payrolls and records of matters covered by this agreement. Such rights last for three years from the date final payment is made hereunder.*

Records, Documents, and Reports – Identifies the books, records, documents, and procedures that reflect costs.

**SAMPLE RECORDS, DOCUMENTS, AND REPORTS PROVISION**

*The CONTRACTOR shall maintain books, records, documents, and other evidence and accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature, expended in the performance of this agreement. These records shall be subject at all reasonable times to inspection, review, or audit by CITY personnel and other personnel duly authorized by the CITY. The CONTRACTOR will retain all books, records, documents, and other material relevant to this agreement for three years after expiration.*

## 6.7 Personnel Matters

- Indicate who will hire employees to be engaged in joint endeavor
- Specify the right, privileges, immunities and benefits of employees
- Specify the professional qualifications of personnel to be hired

Contractor not Employee of Jurisdiction – Avoids conflict of interest. Neither the contractor nor contractor employees are to be a member of the jurisdiction negotiating the agreement.

### **SAMPLE CONTRACTOR NOT EMPLOYEE OF JURISDICTION PROVISION**

*The CONTRACTOR, his/her employees or agents performing under this agreement, are not deemed to be employees of the CITY nor as agents of the CITY in any manner whatsoever. The CONTRACTOR will not hold himself/herself out as nor claim to be an officer or employee of the CITY or the state by reason hereof and will not make any claim, demand, or application to or for any right or privilege application to an officer or employee of the CITY or the state.*

## 6.8 Property Arrangements

- Indicate how to handle matters concerning property acquisition, title of real estate, and allocations of expenses
- Provide formulas and procedures for disposition of property on contract expiration or termination
- Include language that waives a party's liability for damage to property for specified causes that are beyond the party's control and/or are not the sole result of the party's negligence

Post Response – Describes the method by which the request for assistance and/or response to the request is terminated. This may include returning equipment, releasing personnel, acquiring property, and holding and disposing of equipment and property.

### **SAMPLE POST RESPONSE PROVISION**

*This agreement shall be effective as to each party when the legislative body of each such party has approved the same by resolution or ordinance or other action with the Washington State Military Department, Emergency Management Division. Said agreement shall be operative and binding until terminated by said participants.*

Liability – The responsibility for liabilities is stated.

**SAMPLE LIABILITY PROVISION**

*It is hereby understood that unless adopted Mutual Aid Operational Plans dictate otherwise, all services and/or resources provided under the terms of this Mutual Aid Agreement are furnished and/or supplied voluntarily and at the discretion of the furnishing agency. The furnishing agency shall have the primary interest of protecting the welfare of its own constituency and does not assume any responsibilities or liabilities in not providing resources and/or services to other parties of this agreement.*

## 6.9 Duration, Termination, and Amendment

- State the contract's terms which may be a period of time
- Provide for amendment in writing subject to prior agreement of the parties and assurance of no adverse effect on existing contractual obligations
- Provide a procedure for how the parties will be notified of consideration for making a change to the agreement
- Identify termination procedures after a specified period of time for parties following written notice of intent
- Provide a list of occurrences that would be sufficient justification for termination

Agreement Maintenance – This establishes a regularly scheduled review of the agreement, specific operational procedures, procedure for resolving disagreement, developing possible changes to the agreement, or any other action that will facilitate the intent of the agreement.

### **SAMPLE AGREEMENT MAINTENANCE PROVISION**

*This agreement will be reviewed bi-annually by all parties. Any party to this agreement may withdraw at any time by giving thirty (30) days written notice to the other parties.*

Agreement Modifications – This describes the manner in which the agreement may be modified.

### **SAMPLE AGREEMENT MODIFICATIONS PROVISION**

*The CITY and the CONTRACTOR may, from time to time, request changes in services to be performed with the funds. Any such changes that are mutually agreed upon by the CITY and the CONTRACTOR shall be incorporated herein by written amendment to this agreement. It is mutually agreed and understood that no alteration or variation of the terms of agreement shall be valid unless made in writing and signed by the parties hereto and that any oral understanding or agreements not incorporated herein, unless made in writing and signed by the parties hereto, shall not be binding.*

Agreement Period – This includes the beginning and end date of the agreement. The end date can be left open and thus precludes having to renegotiate the agreement.

### **SAMPLE AGREEMENT PERIOD PROVISION**

*The effective date of this agreement shall be the date the parties sign and complete the execution of this agreement. The agreement shall be reviewed bi-annually. The termination of this agreement shall be June 30, 2009.*

Recapture Provisions – In the circumstance that the jurisdiction is not satisfied that the terms of the contract were met, the conditions for reclaiming funds is established.

**SAMPLE RECAPTURE PROVISION**

*In the event that the CONTRACTOR fails to expend funds under this agreement in accordance with state laws and/or the provisions of this agreement, the CITY reserves the right to recapture funds in an amount equivalent to the extent of noncompliance. Such a right of recapture shall exist for a period not to exceed three years following agreement termination. Repayment by the CONTRACTOR of funds under this recapture provision shall occur within thirty (30) days of demand. In the event that the CITY is required to institute legal proceedings to enforce the recapture provision, the CITY shall be entitled to its costs thereof, including reasonable attorney's fees.*

Termination and Review of Agreement – Identifies the terms for terminating and reviewing the agreement prior to the end of the agreement period.

**SAMPLE TERMINATION AND REVIEW OF AGREEMENT PROVISION**

- a) If, through any cause, the CONTRACTOR shall fail to fulfill in a timely and proper manner its obligations under this agreement or if the CONTRACTOR shall violate any of its covenants, agreements, or stipulations of this agreement, the CITY shall thereupon have the right to terminate this agreement and withhold the remaining allocation if such default or violation is not corrected within twenty (20) days after submitting written notice to the CONTRACTOR describing such default or violation.*
- b) Notwithstanding any provisions of this agreement, either party may terminate this agreement by providing written notice of such termination, specifying the effective date thereof, at least thirty (30) days prior to such date.*
- c) Reimbursement for CONTRACTOR services performed and not otherwise paid for by the COUNTY prior to the effective date of such termination, shall be as the CITY reasonably determines.*
- d) The CITY may unilaterally terminate all or part of this agreement, or may reduce its scope of work and budget, if there is a reduction in funds by the source of those funds and if such funds are the basis for this agreement.*

Condition for Implementation – Description of the conditions for requesting, offering, and/or withdrawing support. The form in which the request or offer will be made should be stated.

**SAMPLE CONDITION FOR IMPLEMENTATION PROVISION**

*It is hereby understood that unless adopted Mutual Aid Operational Plans dictate otherwise, all services and/or resources provided under the terms of this Mutual Aid Agreement are furnished and/or supplied voluntarily and at the discretion of the furnishing agency. The furnishing agency shall have the primary interest of protecting the welfare of its own constituency and does not assume any responsibilities or liabilities in not providing resources and/or services to other parties of this agreement.*

## 6.10 Miscellaneous Provisions

- Include an indemnity or hold harmless clause as needed
- Include section on insurance coverage and limits
- Include a severability clause that protects the validity of the rest of the contract in the event some provision is held to be invalid
- Includes a non-discrimination clause to insure affirmative action in employment
- Provide a procedure for the resolutions of disputes over technical and policy issues

Agreement not Exclusive – This includes a statement explaining that the agreement is not intended to be exclusive between the jurisdictions and that the participating entities can enter into other agreements.

### **SAMPLE AGREEMENT NOT EXCLUSIVE PROVISION**

*It is hereby understood that the agreements entered into hereunder and the corresponding Mutual Aid Operational Plans adopted shall not supplant existing supplemental Mutual Aid Agreements.*

Dispute Procedures – Identifies the manner in which disputes will be decided, and typically includes a requirement that work and payment continue during the resolution of the dispute.

### **SAMPLE DISPUTE PROCEDURES PROVISION**

*The PARTIES agree to use due diligence to cooperate and communicate with each other to resolve any and all disputes which may arise under this AGREEMENT. The PARTIES agree that before they will exercise the termination rights described in \_\_\_\_\_ they will attempt to resolve the dispute and will allow the non-disputing PARTIES the opportunity to cure the alleged dispute. In the event they are unable to do so, the PARTIES agree to mediate the dispute prior to exercising their termination rights.*

Hold Harmless – The contractor will not hold the jurisdiction liable for damages incurred in the fulfillment of the agreement.

### **SAMPLE HOLD HARMLESS PROVISION**

*The Local Government hereby covenants and agrees to take all responsible precautions in the performance of its duties under the Permit and/or under this Agreement against violation(s) of the Permit and/or against the occurrence of any accidents, injuries, or damages to any person or property. The Local Government will hold harmless and fully indemnify the*

*District and/or the other Local Government(s) signatory to the same form of this Agreement, including attorney performance of, or failure to perform, its duty(ies) pursuant to the Permit and/or this Agreement. The District agrees that the Local Government shall have the authority to control any litigation arising from the Local Government's performance of, or failure to perform, its duty(ies) pursuant of the Permit and/or this Agreement.*

Insurance – Identifies the type of insurance coverage the agreeing parties will provide.

**SAMPLE INSURANCE PROVISION**

*Each participating utility 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.*

Nondiscrimination Provision – Establishes that the contractor will not discriminate against any employee paid by the jurisdiction.

**SAMPLE NONDISCRIMINATION PROVISION**

*There shall be no discrimination against any employee who is paid by the funds indicated in the agreement or against any applicant for such employment because of race, color, religion, handicap, marital status, political affiliation, sex, age, or national origin. This provision shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, lay-off or termination, rates of pay or other forms of compensation and selection for training.*

Scope of Work – A detailed statement of the service provisions of the agreement.

**SAMPLE SCOPE OF WORK STATEMENT**

*During an emergency or disaster, the CONTRACTOR shall provide public works personnel and equipment to the COUNTY for the purpose of responding to or recovering from the event. The personnel and equipment will be used for projects such as making fire trails, hauling sand, rocks, or gravel, making dikes and transporting materials. If the CONTRACTOR is affected by the emergency or disaster, the provisions of the agreement will not be invoked. If the CONTRACTOR is not affected by the same emergency or disaster, and has other Interlocal Agreements in effect, priority will be given to the COUNTY in providing support. The CONTRACTOR personnel will be employed in accordance with the CONTRACTOR union agreement. The CONTRACTOR will maintain the equipment as agreed to. Time spent*

*in equipment maintenance resulting from this agreement will be reimbursed at the prevailing rate.*

Special Provision – Specifies that the jurisdiction does not waive any agreement rights because strict conformances of other provisions of the agreement have not been required.

**SAMPLE SPECIAL PROVISION**

*The CITY'S failure to insist upon the strict performance of any provision of this agreement or to exercise any right based upon a breach thereof of the acceptance of any performance during such breach shall not constitute a waiver of any right under this agreement.*

Severability – If any portion of the agreement is determined to be invalid, it does not invalidate the other conditions of the agreement.

**SAMPLE SEVERABILITY PROVISION**

*If any provision, paragraph, sentence, or clause of this agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such shall not affect the remainder of this agreement and this agreement shall be construed and enforced, consistent with its expressed purposes, as if such invalid and unenforceable provision, paragraph, sentence, or clause had not been contained herein.*

Signature Blocks – A signature block for the key executive officials and the attesting official of all participating jurisdictions and authority, if necessary.

**SAMPLE SIGNATURE BLOCKS**

*IN WITNESS WHEREOF, the CITY and CONTRACTOR have executed this agreement as of the date and year written below.*

_____	_____
<i>(Person authorized for CITY)</i>	<i>(Person authorized for CONTRACTOR)</i>
<i>(Title)</i>	<i>(Title)</i>
<i>(Organization)</i>	<i>(Organization)</i>

DATE: _____	DATE: _____
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<i>Phone # of Agreement Administrator</i>	<i>Phone # of Agreement Administrator</i>
<i>Address of City</i>	<i>Address of Contractor</i>

_____	_____
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APPROVED AS TO FORM:

\_\_\_\_\_  
*City Attorney*

DATE: \_\_\_\_\_

Warranty – The official authorization by the governing body of each party. Each signatory to the agreement guarantees and warrants that the signatory has full authority to execute this agreement and to legally bind the respective party to this agreement.

**SAMPLE WARRANTY PROVISION**

*Each Coalition Member represents and warrants to the Coalition, and to the other Coalition Members, that it has been fully authorized to execute and to perform this Agreement, and that its execution and performance of this Agreement will not violate any legal duty or restriction.*

## REFERENCES

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