



Item No. 13 Town of Atherton

CITY COUNCIL STAFF REPORT – CONSENT AGENDA

**TO: HONORABLE MAYOR AND CITY COUNCIL
GEORGE RODERICKS, CITY MANAGER**

**THROUGH: MICHAEL KASHIWAGI
COMMUNITY SERVICES DIRECTOR**

FROM: GORDON SIEBERT, CITY ENGINEER

DATE: JULY 15, 2015

**SUBJECT: RESOLUTION ADOPTING THE SAN MATEO COUNTY PUBLIC
WORKS MUTUAL AID AGREEMENT**

RECOMMENDATION

Adopt the attached Resolution No. 15-xx authorizing the adoption of the San Mateo Public Works Mutual Aid Agreement.

BACKGROUND

The heavy winter storms of late 2012 and early 2013 affected Atherton and several other communities with one of the most significant impacts being severe flooding in the nearby city of East Palo Alto. During the storm event response, the San Mateo County Office of Emergency Services (OES) encountered significant difficulties in obtaining public works mutual aid assistance for the beleaguered cities.

In February 2013, OES staff requested that the City/County Engineers' Association of San Mateo County (CCEA) assist in solving the issue. Utilizing a model agreement as a template, the CCEA, with input from two City Attorneys and OES staff drafted an agreement for San Mateo cities. The concept was presented to the San Mateo City/County Managers at one of their regularly scheduled meetings, and was presented twice to the Emergency Services Council of the San Mateo County Operational Area Emergency Services Organization. Both organizations recommend approval countywide.

A final draft of the proposed new agreement was routed to all Public Works Directors in late 2014. The final document was reviewed by County Counsel and forwarded to all City Attorneys for their review.

Adopt Public Works Mutual Aid Agreement

July 15, 2015

Page 2 of 2

There was a historical public works mutual aid agreement in 1994, but that agreement was not formally adopted.

ANALYSIS

The purpose of this agreement is to provide an organized means of providing and paying for mutual aid to neighboring cities during a disaster. In many ways, this provision of aid is similar to what already exists for police and fire services (with an exception being that Public Works Aid is not proposed as automatic). The language of the Agreement and its accompanying Procedures Guide specifically envisions establishing a “zone” concept of aid that mirrors existing and developing zones in police and fire mutual aid.

There is no requirement for any municipal entity in San Mateo County to enter into this agreement. At this point, most communities have the agreement slated for approval by their governing bodies. An update of adoption will be presented to City Council at the July meeting.

POLICY FOCUS

The City Council will be asked whether it wants to participate with other cities, despite its current contract with a private company that can provide additional resources to Atherton in an emergency, under the existing MCE agreement.

FISCAL IMPACT

The Agreement requires that the “Requesting Party” reimburse the “Assisting Party” for all of its costs of providing assistance within sixty days. The advantage provided to the “Requesting Party” by the Agreement is that pre-existing arrangements for the provision of services are often necessary to promptly obtain reimbursement from state (i.e., California Disaster Assistance Act) or federal (i.e., Federal Emergency Management Agency) funds.

PUBLIC NOTICE

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town’s electronic News Flash and Atherton Online. There are approximately 1,200 subscribers to the Town’s electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but be not limited to, media outlets, school districts, Menlo Park Fire District, service providers (water, power, and sewer), and regional elected officials.

ATTACHMENTS

- Resolution “Public Works Mutual Aid Agreement”
- May 29, 2015 County of San Mateo - Public Works Mutual Aid Agreement
- Procedures Guide - Public Works Mutual Aid Agreement

RESOLUTION NO. 15-xx

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
AUTHORIZING THE EXECUTION OF A PUBLIC WORKS MUTUAL AID
AGREEMENT**

WHEREAS, the County of San Mateo and the cities in San Mateo County have expressed a mutual interest in the establishment of a plan to encourage public works mutual aid agreements; and

WHEREAS, the City Council has determined that it would be in the Town's best interest to participate in a Public Works Mutual Aid Agreement; and

WHEREAS, Section 8630 et seq. of the State of California Government Code grants local agencies full power to provide mutual aid pursuant to established agreements; and

WHEREAS, a form of agreement for public works mutual aid has been presented to this Council and considered;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the Town of Atherton as follows:

1. The May 29, 2015 County of San Mateo Public Works Mutual Aid Agreement is hereby adopted.
2. The City Manager is hereby authorized to execute the Agreement.

* * * *

PASSED AND ADOPTED at a regular meeting of the City Council of the Town of Atherton held on the ___ day of _____, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Rick DeGolia, Mayor

ATTEST:

Theresa Della Santa, City Clerk

County of San Mateo Public Works Mutual Aid Agreement

This Public Works Mutual Aid Agreement (“Agreement” or “Mutual Aid Agreement”) is made and entered into this 29th day of May, 2015, by and between the parties signatory below (hereinafter individually referred to as “Party” or collectively referred to as the “Parties” to this Agreement).

WHEREAS, it is desirable and necessary for the protection of life, property and the environment that each of the Parties hereto voluntarily aid and assist each other by the interchange of public works services and resources in the event of an emergency; and

WHEREAS, County of San Mateo’s Department of Public Works and all twenty (20) cities within the County of San Mateo (“County”) have expressed an interest in the establishment of a plan to facilitate and encourage Public Works Mutual Aid Agreements throughout the County of San Mateo; and

WHEREAS, the Parties have determined that it would be in their best interests to enter into a Mutual Aid Agreement that implements a plan and sets forth procedures and responsibilities of the Parties whenever emergency personnel, equipment, and facility assistance is provided from another Party’s public works department to the other; and

WHEREAS, no Party should be in a position of unreasonably depleting its own resources, facilities, or services providing such mutual aid; and

WHEREAS, such an agreement is in accord with the California Emergency Services Act (“Act”) set forth in Title 2, Division 1, Chapter 7 (Section 8550 et seq.) of the Government Code and specifically with Article 14 (Section 8630 et seq.) of the Act; and

WHEREAS, all Parties must use protocols established in the Standardized Emergency Management System and the National Incident Management System to be eligible for possible state or federal reimbursement of response-related personnel and resource costs.

In consideration of the conditions and covenants contained herein, the Parties agree as follows:

1. Definitions. For this Agreement, the following terms shall be ascribed the following meanings:
 - a. “Assisting Coordinator” shall mean the Coordinator of a Party providing public works mutual aid.

- b. "Assisting Party" shall mean the Party to this Agreement providing public works mutual aid to another Party.
 - c. "Coordinator" shall mean the person designated by each Party to act on behalf of that Party on all matters relative to public works mutual aid, to include but not be limited to requests, responses, and reimbursement. This term also includes the following distinct Coordinators:
 - a. Operational Area Coordinator is the individual who arranges and coordinates distribution of public works mutual aid countywide.
 - b. Zone Coordinator is the individual who coordinates distribution of public works mutual aid from resources assigned by the operational area to local jurisdictions within a geographic zone.
 - c. Local Coordinator is the individual who fulfills the functionally equivalent role of a city or town Public Works Branch Director.
 - d. "Local Emergency" shall mean the actual or threatened existence of conditions of disaster or extreme peril to the safety of persons or property within the territorial limits of one of the Parties caused by human or natural conditions such as air pollution, fire, flood, storm, wind, earthquake, explosion, transportation accident, hazardous material problem, tsunami, sudden or severe energy shortage, epidemic, riot or other occurrences, other than conditions resulting from a labor controversy, which occurrences, or the immediate threat thereof, are likely to be beyond the control of the personnel, equipment, or facilities of that Party to this Agreement and which personnel, equipment or facilities of the other Party are therefore desired to combat.
 - e. An "Operational Area" for the coordination of Public Works Mutual Aid will be San Mateo County and all the jurisdictions within the County that are Parties to this Agreement. Consistent with the Standardized Emergency Management System, the Operational Area is an intermediate level of the state emergency services organization, which serves as a link in the systems of communications and coordination between the political subdivisions comprising the Operational Area and the Regional or State Emergency Operations Center (s).
 - f. "Requesting Coordinator" shall mean the Coordinator of a Party requesting public works mutual aid.
 - g. "Requesting Party" shall mean the Party to this Agreement requesting public works mutual aid.
2. Designation of Coordinator. Coordinators shall be designated by each Party; the Title, Name, Address, and Phone Number of the Coordinator shall be provided to the

Operational Area Coordinator designated in Paragraph 20 hereinafter. If said designation changes, the Parties shall notify the Operational Area Coordinator as soon as practical after the appointment has been made.

3. Mutual Aid. When a local emergency has been proclaimed by a Party's governing body or authorized official, the Requesting Coordinator may request assistance from the Parties. In situations where extreme imminent threat to life, property, or the environment exists, the requirement for a proclamation before providing assistance may be waived under the presumption that such a proclamation will be made in accordance with all local and state regulations as promptly as reasonably possible.
4. Availability. The Parties agree that the mutual aid extended under this Agreement and the operational plans implementing this agreement are to be available and furnished in all cases of emergencies regardless of type, provided that such mutual aid does not compromise any Party's ability or capacity to respond to calls for service within its own jurisdiction. When request for assistance is received, the Assisting Coordinator will promptly advise of the extent of response, provide whatever personnel, equipment, and facilities are available without jeopardizing the safety of persons or property within their jurisdiction. No Party receiving a request for assistance shall be under any obligation to provide assistance or incur any liability for not complying with the request.
5. Return of Resources. When the Assisting Party's personnel, equipment, or facilities are no longer required, or when the Assisting Coordinator advises that the resources are required within their own jurisdiction, the Requesting Coordinator shall immediately arrange for the return of those resources.
6. Safekeeping of Resources. The Requesting Party shall be responsible for the safekeeping of the resources provided by the Assisting Party. The Requesting Coordinator shall remain in charge of the incident or occurrence and shall maintain control and direction of the resources provided by the Assisting Party. The request may include the provision of supervisory personnel to take direct charge of the resources under the general direction of the Requesting Coordinator. The Requesting Party shall make arrangements for feeding and/or assisting personnel, and for fueling, servicing, and repair of equipment unless the Assisting Coordinator agrees that these arrangements are not necessary or are to be provided by the Assisting Party.
7. Employment Status. The Assisting Party's personnel shall not be deemed employees of Requesting Party and vice versa.
8. Insurance. Each Party shall be responsible to provide, in its own discretion, at its sole expense, sufficient insurance for its personnel and entity.

9. Worker's Compensation. Each Party shall provide, at its sole expense, the required worker's compensation insurance coverage necessary for its own employees. It is recognized that at such times as one Party provides aid to another Party under the terms of this Agreement, the employees of the Assisting Party may claim to have become special employees on a temporary basis of the Requesting Party. Should any such claim result in any worker's compensation claim being asserted, it is hereby agreed that each such claim shall be the responsibility and liability of the Assisting Party as general employer to process, defend, and pay, if necessary.
10. Mutual Aid Costs. The Requesting Party agrees to pay all reasonable direct, indirect, administrative and contracted costs of the Assisting Party incurred as a result of providing assistance under this Agreement, based upon standard rates applicable to Assisting Party's internal operations. Payment shall be made within sixty (60) days after receipt of a detailed invoice. Payment may be delayed if agreed upon by both Parties. Requesting Party shall not assume any liability for the direct payment of any salary or wages to any officer or employee of the Assisting Party.
11. Defense and Indemnification.

11.1 Claims Arising from Sole Acts or Omissions of a Party. Each Party to this Agreement hereby agrees to defend and indemnify the other Parties to this Agreement, their agents, officers and employees, from any claim, action or proceeding against another Party, arising solely out of its own acts or omissions in the performance of this Agreement. At each Party's sole discretion, each Party may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve any Party of any obligation imposed by this Agreement. Parties shall notify each other promptly of any claim, action or proceeding and cooperate fully in the defense.

11.2 Claims Arising from Concurrent Acts or Omissions. The Parties hereby agree to defend themselves from any claim, action, or proceeding arising out of the concurrent acts or omissions of the Parties. In such cases, Parties agree to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs, except as provided in paragraph 11.3 below.

11.3 Joint Defense. Notwithstanding paragraph 11.2 above, in cases where Parties agree in writing to a joint defense, Parties may appoint joint defense counsel to defend the claim, action, or proceeding arising out of the concurrent acts or omissions of Parties. Joint defense counsel shall be selected by mutual agreement of said Parties. Parties agree to share the costs of such joint defense and any agreed settlement in equal amounts, except as provided in paragraph 11.4 below. Parties further agree that no Party may bind the others to a settlement agreement without the written consent of the others.

11.4 Reimbursement and/or Reallocation. Where a trial verdict or arbitration award allocates or determines the comparative fault of the Parties, those Parties may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments and awards, consistent with such comparative fault. The Parties expressly waive pro rata allocation off liability under Government Code Section 895.6.

12. No Waiver. This agreement shall in no way abrogate or waive any of the immunities available under Federal, State, and local law and regulations, including but not limited to the California Emergency Services Act, Government Code sections 8655 et seq.
13. Records. When mutual aid is provided, the Requesting and Assisting Parties will keep account records of the personnel, equipment, mileage, and materials provided as required by Federal and State law, the California Disaster Assistance Act, and FEMA guidelines to maximize the possibility of Federal and State disaster reimbursement. Each Party shall have access to another Party's records for this purpose.
14. Effective Date. This agreement shall take effect immediately upon its execution and shall remain in effect until terminated.
15. Withdrawal. Any Party may withdraw from this agreement, with or without cause, upon delivery of one-hundred twenty (120) days prior written notice to the Operational Area Coordinator designated in Paragraph 20 below.
16. Prior Agreements. To the extent that they are inconsistent with this agreement, all prior agreements for Public Works Mutual Aid between the Parties are hereby null and void. This agreement expressly supersedes the June 14, 1994 "Public Works Mutual Aid Agreement" entered into by the County of San Mateo and the cities in San Mateo County. This process does not preclude any routine or shared services for which the Parties may provide, may already have contracted, or may contract in the future.
17. Multiple Requests. Requests for public works mutual aid under this agreement when more than one city is impacted by an emergency will be channeled through the Operational Area Coordinator, whether or not that individual is activated as part of a Department Operations Center or as part of the San Mateo County Operational Area Emergency Operation Center, to ensure maximum effectiveness in allocating resources to the highest priority needs.
18. Dispute Resolution. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

19. Tort Claims Act. This agreement in no way acts to abrogate or waive any immunity available under the Tort Claims Act.
20. Operational Area Coordinator. The County of San Mateo Department of Public Works shall act as the initial Operational Area Coordinator of this program for the purpose of:
 - a. Receipt of new members to the agreement.
 - b. Maintaining a current list of signatory Parties and Coordinators.
 - c. Establishing and maintaining a list of Local Coordinators who have volunteered to serve as a Zone Coordinator.
 - d. Circulating annually a list of all Parties and Coordinators to all signatory Parties.
 - e. Arranging for amendments to the Agreement as may be necessary.

The Party acting as Operational Area Coordinator may transfer these responsibilities to another Party with the consent of that Party and upon notification of the other Parties.

21. Execution. All Parties agree that any other qualified public agency or quasi-public agency may become a Party to this Agreement by executing a duplicate copy of this Agreement and sending same to the Operational Area Coordinator, initially the County of San Mateo Department of Public Works, addressed as follows:

Public Works Director
County of San Mateo
555 County Center, 5th Floor
Redwood City, CA, 94063-1665

22. Third Party Beneficiaries. Nothing set forth in this Agreement shall create, nor is it intended to create, third party beneficiaries with rights to enforce any clause, condition or term of this Agreement, or assert a claim or cause of action for breach of this Agreement.
23. Severability. Should any term or provision of this Agreement be determined to be illegal or in conflict with any law, the validity of the remaining portions or provisions shall not be affected thereby. Each term or provision of this Agreement shall be valid and enforced as written to the fullest extent permitted by law.

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed and attested by its proper officers thereunto duly authorized, as follows:

Signatories	Resolution/Action Number	Date of Adoption
Atherton		
Belmont		
Brisbane		
Burlingame		
Colma		
Daly City		
East Palo Alto		
Foster City		
Half Moon Bay		
Hillsborough		
Menlo Park		
Millbrae		
Pacifica		
Portola Valley		
Redwood City		
San Bruno		
San Carlos		
San Mateo		
South San Francisco		
Woodside		
County of San Mateo		

**County of San Mateo
Public Works Mutual Aid Agreement
Procedures Guide**

I. PURPOSE

The purpose of this Procedures Guide is to provide Parties to the Public Works Mutual Aid Agreement with a practical set of guidelines on how to effectively provide and receive public works assistance. The terms of the Agreement shall govern in the event there is any actual or apparent conflict between this procedure guide and the Agreement. The following provisions are suggested guidelines only and not binding on any agency. These provisions should be modified and expanded as necessary to meet the unique needs, emergency organizational structure, and working relationships of each operational and regional area.

II. TENETS OF OPERATIONAL AREA PUBLIC WORKS MUTUAL AID

1. The most effective means of providing timely assistance to a jurisdiction impacted by a disaster is to have agreements in place in advance of the disaster.
2. Assistance is voluntary.
3. Assistance provided shall be reimbursed by the requesting jurisdiction.
4. Jurisdictions should reasonably commit their own resources before requesting mutual aid.
5. A Proclamation of a Local Emergency is necessary to activate the agreement, unless waived by the Parties per paragraph 3 of the Agreement.
6. Cooperative planning and training are desirable to enhance the effectiveness of providing mutual aid when needed.

III. PROCEDURES FOR PUBLIC WORKS MUTUAL AID

1. Designated Public Works Coordinator

The Agreement specifies that the "Coordinator" shall mean the person designated by each party to act on behalf of that party on all matters relative to public works mutual aid, including but not limited to requests, responses and reimbursement.

It is suggested that the Coordinator be a person who during a disaster would be authorized to request public works resources and bind their agency for the cost of these resources. The Coordinator should also be in a position to authorize the providing agency to release personnel and equipment to the agency impacted by the disaster.

It is suggested that alternate coordinators be designated in case the primary coordinator is unavailable during the disaster.

2. WebEOC Communication

To obtain Public Works assistance, a planned method of communicating requests is essential. This includes using WebEOC as the primary means to process the request and maintain lines of communication. It is recommended that WebEOC be used to request assistance using the Resource Task (ICS-213RR). Communication via telephone, radio, microwave, etc. may be necessary in the early phases of an incident to ensure requests are being received and processed in a timely manner, and may also be used as secondary communication channels.

3. Operational Area Concept

The Agreement notes that an Operational Area, normally a County and all the jurisdictions within the County, will be the basic unit for coordinating public works mutual aid. Additionally, the coordination and assistance provided will generally mirror the zone concept of mutual aid under development by the San Mateo County Office of Emergency Services. Additionally, parties to the Agreement are expected to work cooperatively to pre-plan standardized response "packages" of resources to be provided to the varying levels of incident complexity identified in the National Incident Management System (NIMS).

4. California Office of Emergency Services (Cal OES) Role

Cal OES is expected to support public works mutual aid assistance under the agreement by offering assistance to the Regional and Operational Public Works Coordinator, and act as Statewide Coordinator for seeking mutual aid resources if required from beyond the impacted region.

5. Resource Lists and Contacts

It is strongly recommended that lists of public works resources be developed for each participating agency in the Operational Area. This list should be populated in the resources section of WebEOC and regularly reviewed and updated. Such lists are essential for the Operational Area Coordinator to quickly identify which agencies have the particular types of resources needed by the requesting impacted agency.

The designated Local Coordinator for each jurisdiction should develop a detailed list of resources for their agency by quantity, type of personnel equipment, materials, and a contact number to check on its availability when needed. It is suggested that the coordinator then provide a brief summary of that information to the operational area coordinator.

It is suggested that each party develops common standardized terminologies for resources to facilitate categorizing and compiling these inventory lists. However, the development of the standardized terminology should not impede the development of these resource lists.

6. Arrange Care for Assisting Forces

The Agreement requires that the Requesting Party be responsible for the safekeeping of the resources provided by the Assisting Party.

7. Documentation for Reimbursement

In accordance with the Agreement, each requesting and assisting party is required to keep accounting records of the personnel, equipment, and materials provided under the Mutual Aid Agreement as required by the Federal Stafford Act administered by the Federal Emergency Management Administration (FEMA) and State guidelines. This requirement is to maximize the requesting agencies reimbursement of costs expended to receive mutual aid.

Each party to the Agreement should become thoroughly familiar with those federal and state accounting requirements and pre-establish emergency management procedures and training of their personnel to carefully document all costs of labor, equipment and personnel, including administrative costs, accounted by specific damage location. These practices are not only for mutual aid reimbursement but for reimbursement of all agency costs associated with the disaster.

8. Proclamation of Emergency

The Agreement requires that a Proclamation of Local Emergency must be approved by an authorized official of the impacted jurisdiction. A State of Emergency should also be requested through the Operational Area for approval by the Governor to authorize State reimbursement and, if warranted, a request for a Presidential Proclamation of Emergency to authorize federal reimbursement. Each Agency should include in their emergency plan a provision to seek such a proclamation from the authorized official in their jurisdiction as soon as they can reasonably determine that the disaster will be beyond the scope of mutual aid assistance. Because cumulative estimates of damage across the county may be combined to establish a basis for reimbursement from the state and a gubernatorial declaration of emergency, the collection and provision of damage estimates to the Operational Area for any incident that might have countywide implication is important in obtaining external resources.

9. Agency in Charge

The Agreement provides that the Requesting Coordinator shall remain in charge of the incident and provide direction and control to the resources provided by the assisting party. The request may also include having the Assisting Party providing supervisory personnel to take direct charge of their forces under the overall direction of the Requesting Coordinator. The intent is that the Assisting Party will comply with all reasonable directions from the Requesting Coordinator. However, the Assisting Party should not be obligated to perform any work that it reasonably believes would unduly jeopardize the safety of its employees.

10. Checklists for Requesting Mutual Aid

Each Party to the Agreement is encouraged to develop checklists for their Coordinator to use in assuring that all required steps are followed to properly and effectively seek and provide Public Works Mutual Aid for the benefit of the impacted area and protection of the assisting party. These checklists should establish who is to carry out each essential function both internally to the agency and externally, and contact numbers and means for reaching them.

Attachment A (San Mateo County Operational Area Public Works Checklist for Mutual Aid Assistance) is a sample checklist.

San Mateo County Public Works Checklist for Mutual Aid Assistance

I. Pre-Event

Develop procedures at the local operational area to carry out mutual aid including checklists of actions, resource lists, etc.

II. Post Event

1. Local Agency quickly assesses estimated extent of damage and availability of local resources to respond.
2. If it is apparent that outside resources will be needed to effectively deal with the emergency, promptly authorize local official to request Proclamation of Local Emergency and, if warranted, request State of Emergency Proclamation through the Operational Area Emergency Operation Center.
3. Upon proclamation of local emergency, request mutual aid assistance from Operational Area Public Works Mutual Aid Coordinator according to pre-established procedures in WebEOC.
4. Ensure request is specific as to type and quantity of resources needed, when to report, who to report to, how long needed, type of work to be performed.

Once a providing party can be located to satisfy the resource request, the coordinator will determine how quickly these resources can be made available and notify the requesting party of that fact.

5. The requesting party will make all necessary arrangements to care for the assisting party's personnel and equipment if needed.
6. The requesting party will carefully document all costs by specific damage site according to State and Federal procedures to maximize reimbursement for costs. Carefully record the names of assisting personnel and equipment at each site, hours worked, and mileage.
7. The requesting party should return the assisting party's resources as soon as possible.