

## **MEMORANDUM OF UNDERSTANDING MUTUAL AID / SHARING OF MUNICIPAL and PRIVATE RESOURCES**

### **I. INTRODUCTION AND PURPOSE**

The purpose of this Memorandum of Understanding (MOU) is to establish a framework for the fulfillment of the PA DEP rules and regulations for a Municipal Authority to operate its utility services in a compliant and responsible manner, but in an efficient and economical manner, through a partnership of multiple Municipal Authorities and a private business enterprise, through the sharing of equipment and manpower that is not logistically nor practically owned nor maintained by each of the Authority or private partners.

West Cornwall Township Municipal Authority (WCTMA) and South Annville Township, Lebanon County, Authority (SATA) were each compelled by PADEP to install and operate public sewer and/or water systems in a wide variety of areas within each Township. Due to the high cost of construction and the limited number of users of the utility systems, the user rates in each Township are higher than desired. The size of each Authority and their available budgets and resources have precluded the Authorities from employing a staff of DEP licensed operators that are required by state regulations to oversee operations and maintenance (O&M) of all public sewer and water systems in the state. Limited resources have also precluded the Authorities from owning, maintaining, or staffing an office or a maintenance building; or a fleet of vehicles and O&M equipment required that is routinely needed to operate and maintain their utility systems without the need for contract services. Contract service providers for sewer or water systems are referred to as “circuit riders”, which employ a staff of qualified, experienced DEP licensed sewer or water operators; as well as some of the O&M equipment and vehicles required to operate utility systems.

Steckbeck Engineering & Surveying, Inc. (SESI) is the engineering consultant hired and retained by each Authority since its inception. SESI designed the sewer systems of each Authority; supervised the construction of the systems; and has provided system O&M consulting, advice and counsel to WCTMA for 33 years and SATA for 23 years. In 2018, SESI formed a subsidiary business enterprise Municipal & Authority Support Services LLC (MASS) to provide “circuit rider” contract O&M services to SESI’s longstanding municipal clients. Other circuit riders had proven to be unreliable or irresponsible in their contract duties to each Authority, which then resulted in poor condition of the utility systems and higher than normal repair costs. This then led to frequent turnover of circuit riders. SESI’s goal in forming MASS was to provide a local, responsible circuit rider available to SESI’s clients to assure reliable and responsible O&M of each client’s utility systems.

MASS has been continuously retained by WCTMA and SATA since 2018. MASS is also retained by other municipal or quasi-municipal clients: ELCO School District, Lebanon Valley Economic Development Corporation. To fulfill its circuit rider responsibilities to these clients, MASS has maintained a staff of licensed operators and

has accumulated some of the equipment and tools necessary to provide O&M services. In cases when MASS has not had adequate equipment or tools required to provide periodic or emergency O&M, MASS has coordinated the hiring of specialty contractors by each Authority. These specialty contractors are typically more expensive than MASS and take longer to arrive at the site and provide specialty O&M and perform specialty repairs.

The partners agree that it is in their mutual interests for the partners to have availability and access to a wide variety of equipment, tools and vehicles required to form a full arsenal of resources needed for the full spectrum of O&M and emergency services and repairs that are involved in the course of ownership and operations of the utility systems. The partners agree that it can be prohibitively expensive and impractical for any one of the partners to accumulate and maintain a full arsenal of resources. Therefore, it is the intent of the partners to establish an understanding of a practical method to jointly accumulate, maintain, use and share resources needed for the O&M of the Authorities' utility systems; and to avoid the inefficiencies of each maintaining their own duplicate arsenal of resources.

In furtherance of this purpose, this MOU provides a framework through which the parties to this MOU may assist one another in times of need. Each party to this Agreement recognizes that it may need to call upon another party to assist in its own need to provide ongoing utility services, to respond to catastrophes, emergencies, natural disasters, or the like. Each party further recognizes that non-emergency and emergency cooperation remains in the long-term interests of the parties, and therefore enters into this MOU to ensure a consistent, coordinated and timely response in providing mutual aid. By signing below, each party agrees to the terms and conditions contained herein.

## II. PARTIES

This Agreement is made by and between the following parties, having an address and place of business as set forth below:

- a. West Cornwall Township Municipal Authority (WCTMA)  
73 S. Zinns Mill Road  
P.O. Box 1262  
Quentin, PA 17083
- b. South Annville Township, Lebanon County, Authority (SATA)  
811 Church Road  
Lebanon, PA 17042
- c. Municipal & Authority Support Services, LLC (MASS)  
279 N. Zinns Mill Road  
Lebanon, PA 17042

### III. RESOURCES TO BE ACQUIRED AND SHARED

- a) Pick-up truck with snowplow, hauling, trailering capability  
  
2023 Chevrolet 3500 4-wheel drive with Western Snowplow  
Est. Cost: \$50,000                      Scheduled date of acquisition: March 2023 or sooner
  
- b) Utility trailer (tow behind) with assorted small tools  
  
8' x 14' box trailer with, 4,000 watt generator, trash pump, etc.  
Est. Cost: \$10,000                      Scheduled date of acquisition: March 2024 or sooner
  
- c) Gorman Rupp portable, tow-behind sewage pump  
  
400 gpm minimum, engine-driven centrifugal suction lift  
Est. Cost: \$45,000                      Scheduled date of acquisition: March 2025 or sooner
  
- d) Tow behind, diesel power generator  
  
36 to 45 KW  
Est. Cost: \$35,000                      Scheduled date of acquisition: March 2025 or sooner

### IV. METHOD OF ACQUISITION, OWNERSHIP, AND MAINTENANCE RESPONSIBILITIES

Each listed item is described above in paragraph III:

- a) MASS will pay for the truck, purchased through the CoSTARS program and titled in the name of the WCTMA. WCTMA will be the owner. This will be considered a “donation” by MASS. All employees of WCTMA, SATA, and MASS will be afforded the use of the truck for the purposes of O&M of sewer and water systems; plowing pump station sites; plowing alleyways for access to sewer manholes; and for plowing and clearing snow from fire hydrants on the water system. MASS will use the truck for plowing its office parking lot so its operators can exit that site to attend to pump stations and sewer/water systems. MASS may also use the truck to provide services to its other utility clients, insofar as such use shall not detract from the truck being available for use for WCTMA or SATA needs. The truck will be stationed at MASS parking lot at 279 N. Zinns Mill Road. MASS will be responsible for scheduling service, and for the costs of maintenance and repair of the truck. MASS will be responsible for payment of insurance premiums for the truck.
  
- b) MASS will pay for the utility trailer and small tools. MASS will be the owner. All employees of WCTMA, SATA, and MASS will be granted use of the trailer

and tools. MASS will maintain the trailer and pay all costs associated with registration, inspection, and repairs.

- c) SATA will pay for the portable sewer pump, purchased through the CoSTARS program, titled in the name of SATA. SATA may choose to pursue grants toward the purchase price of the sewer pump. SATA will be the owner. All employees of SATA, WCTMA, and MASS will be afforded the use of the pump for emergency service at any of the partners' facilities. The pump will be stationed at the parking lot of MASS. MASS will be responsible for the maintenance, upkeep, and security of the pump. SATA will pay for insurance for the pump under its policy that provides coverage for its sewer system and pumping stations.
- d) WCTMA will pay for the portable generator, purchased through the CoSTARS program, titled in the name of WCTMA. WCTMA may choose to pursue grants toward the purchase price of the generator. WCTMA will be the owner. All employees of WCTMA, SATA, and MASS will be afforded the use of the generator for emergency services at any of the partners' facilities. The generator will be stationed at the parking lot of MASS. MASS will be responsible for the maintenance, upkeep, and security of the generator. WCTMA will pay for insurance for the generator under its policy that provides coverage for its sewer and water systems.

## V. DISPOSITION, SALE OR DISPOSAL OF RESOURCES

Each listed item is described above in paragraphs III and IV. In the event the partnership is terminated, for any reasons or by the methods described in paragraph VI of this MOU:

- a) The truck with snowplow will be sold by the WCTMA utilizing procedures required by the Municipality Authorities Act under the direction of the WCTMA Solicitor. The proceeds of the sale will be distributed 90% to MASS in recognition of its payment and donation of the original purchase price, and 10% to be retained by WCTMA. The Solicitor's fee and costs of the sale will be paid out of the 10% portion retained by WCTMA.
- b) The utility trailer and tools will be retained by MASS, except that any tools which may have been paid for or contributed by WCTMA or SATA during the life of the performance of the partnership shall be returned to WCTMA and/or SATA, respectively.
- c) The sewer pump shall be retained by SATA. SATA shall have the sole discretion to dispose of it by whatever manner or means it desires.
- d) The portable generator shall be retained by WCTMA. WCTMA shall have the sole discretion to dispose of it by whatever manner or means it desires.

## VI. TERMINATION OF PARTNERSHIP

- a) The partnership established by the MOU may be terminated by any of the three parties with sixty (60) days advance notice to the partners, with notice given as prescribed in paragraph XIV. Each of the Authority partners has the right to terminate its circuit rider O&M agreement with MASS, per the terms of the agreement between MASS and WCTMA or the agreement between MASS and SATA. The partnership established by the MOU shall not be considered an obligation or duty for either Authority partner to maintain its professional relationship with MASS or its parent company SESI.
- b) In the event any party opts to terminate this partnership, the remaining partners may continue to operate under this MOU.
- c) In the event that any party requires more than sixty (60) days to find replacement O&M services, then MASS agrees to continue to provide the services until such time that the replacement O&M operator is engaged. Additionally, MASS agrees to cooperate with the transfer of information to the replacement O&M operator, and to train and counsel the replacement as to the ways, means, and methods of operation of the partner Authority's utility system(s). Continuation of services by MASS, after termination, shall continue for no longer than six months.

## VII. OBLIGATIONS OF PARTIES

- a. WCTMA and SATA will maintain insurance in amounts and coverages typically maintained for utility systems and operations of similar size providing service in the Commonwealth of Pennsylvania, or as may be required by applicable law. Insurances shall include Commercial General Liability, Workers' Compensation/Employer's Liability, Automobile Liability, and such other coverages as may reasonably be requested by the other partners.
- b. MASS shall maintain insurance in amounts and coverages typically maintained by engineering consultants and circuit riders in the performance of their duties, unless other amounts shall be agreed to, which insurances shall include Commercial General Liability, Workers' Compensation/Employer's Liability, and Automobile Liability. MASS shall also maintain Professional Errors and Omissions coverage of at least one million dollars (\$1,000,000) and such other coverages as shall be reasonably requested by WCTMA and SATA. Proof of such insurance shall be provided upon request to the requesting partner.
- c. MASS and each of its partner Authority clients shall continue to be obligated to operate under the terms of the O&M services Agreements between MASS and the individual Authority.

## VIII. JOINT RESPONSIBILITIES

It shall be the responsibility of each party to do the following:

- a. Identify potential hazards that could affect the partners and their personnel;
- b. Identify and inventory the current services, equipment, supplies, personnel and other resources related to planning, prevention, mitigation, response and recovery activities of the partner Authority's utility system(s); and
- c. Adopt and put into practice a jointly-agreed standardized incident management system.

## IX. LIMITATIONS

A partner may withhold resources to the extent necessary to provide reasonable protection and services for its own jurisdiction. In the event of a conflict, with dual need for the same equipment at the same time, the parties agree to coordinate in the prioritizing of the use of the equipment based on the severity of the incident. Incidents of dual need may necessitate that partner(s) will need to rent equipment needed to address its needs. MASS agrees to be the lead partner responsible for coordinating services and assignment of partner owned equipment and rented equipment.

## X. TERM

This Agreement shall continue in force and effect until such time as one of the Parties withdraws its participation, upon no less than sixty (60) days' written notice.

## XI. INDEMNIFICATION

To the extent permitted by law, and except to the extent of Assisting Party's gross negligence or intentional misconduct, each party shall indemnify, defend and hold harmless the other parties, its officers, employees, and agents ("Indemnitees") from and against any and all claims, demands, suits, liability, causes of action, fines, penalties, court costs, losses, damages and expenses ("Covered Losses"), including such claims asserted by third parties, arising out of, or resulting from, occasioned by or in connection with the rendering of Assistance under this Agreement or the performance or non-performance of its obligations under this Agreement, on account of any damages, loss or destruction of property or personal injury, including death, to any person or persons, which result from facilitating or furnishing Assistance pursuant to this Agreement ("Covered Claims"). Under no circumstances shall Indemnitees be entitled to special, indirect, punitive, or consequential damages, lost profits or business

interruption damages whether in contract, tort, warranty, strict liability or otherwise. For removal of doubt, payments in connection with workers' compensation or disability or pension benefits, or increases in such costs, whether due to increases in premiums as a result of a Claim or contributions, are not included in Covered Losses, and each party's employees shall be construed as employees of the actual employer and not of the other parties. Any claim for attorney's fees shall be excluded hereunder.

An Indemnitee shall promptly notify requesting party in writing of any Covered Claim for which it seeks indemnification hereunder, and in no case, more than fifteen (15) days after Indemnitee receives notice of such Covered Claim. The requesting party shall have no liability for failing to provide indemnification for any Claim for which it has not received notice. Notwithstanding the foregoing, the Indemnitee shall have the right, at any time, to participate in or assume control of the defense of the Covered Claim with counsel of its choice, which counsel must be reasonably acceptable to requesting party. Requesting party agrees to fully cooperate with Indemnitee. If Indemnitee assumes control of any third-party Covered Claim, requesting party shall have the right to participate in the defense at its own expense. If Indemnitee does not assume control or otherwise participate in the defense of the Covered Claim, Indemnitee shall be bound by the results obtained by requesting party. If Indemnitee assumes defense of a third-party Covered Claim, then in no event shall requesting party admit any liability with respect to, or settle, compromise or discharge, any such third-party Covered Claim without Indemnitee's prior written consent.

## XII. APPLICABLE LAW

This MOU is established under the laws of the Commonwealth of Pennsylvania and shall generally be interpreted, governed by, and construed in accordance with the laws of the Commonwealth.

## XIII. FORUM, DISPUTE RESOLUTION

Any and all disputes, claims, or controversies arising out of or relating in any way to this MOU, shall be resolved through negotiation of the parties and their solicitors or attorney, as may be the case. In the case a negotiated resolution is not achieved, then matters may be resolved through the Court of Common Pleas of Lebanon County, PA.

## XIV. NOTICE

All notices served for purposes of this MOU or any disputes that may result here from shall be sent to the addresses set forth in paragraph II.

XV. JOINT DRAFTING

The parties agree that this MOU was jointly drafted, and that all parties had the opportunity to negotiate terms and to obtain the assistance of counsel in reviewing terms prior to execution. This MOU shall be construed neither against nor in favor of either party but shall be construed in a neutral manner.

XVI. ENTIRE AGREEMENT

This MOU embodies the entire agreement and understanding between the parties relating to the subject matter hereof and there are no covenants, promises, agreements, conditions or understandings, oral or written, except as herein set forth.

XVII. SUCCESSORS AND ASSIGNS

This MOU establishes the intent of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereunto set their hands and seals as of the date set forth above.

West Cornwall Township Municipal Authority

Witness: \_\_\_\_\_

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

Name:

Title:

South Annville Township, Lebanon County, Authority

Witness: \_\_\_\_\_

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

Name:

Title:

Municipal & Authority Support Services, LLC

Witness: \_\_\_\_\_

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

Name:

Title:

\*\*\*\* DRAFT \*\*\*\*