

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY



MASSACHUSETTS EMERGENCY MANAGEMENT AGENCY

400 Worcester Road, Framingham, MA 01702-5399

Tel: 508-820-2000 Fax: 508-820-2030

Website: www.mass.gov/mema

Deval L. Patrick
Governor

Timothy P. Murray
Lieutenant Governor

Mary Elizabeth Heffernan
Secretary

Kurt N. Schwartz
Acting Director

January 21, 2011

TO: Elected Municipal Officials
Municipal Managers & Administrators
Police & Fire Chiefs
Emergency Management Directors
Public Works and Public Health Directors
Building Officials
Other Appointed Municipal Officials

On July 27, 2010, Governor Deval Patrick signed into law Chapter 188 of the Acts of 2010 (An Act Relative to Municipal Relief). This legislation created, among other provisions, two new statewide mutual aid laws. I am writing to promote awareness of these new mutual aid laws and to urge your jurisdiction's participation in them and the long-established Fire Mutual Aid law. The citations for these mutual aid laws are as follows:

Statewide Public Safety Mutual Aid: (MGL c. 40, §4J);

Statewide Public Works Municipal Mutual Aid: (MGL c. 40, §4K);

Fire Mutual Aid: (MGL c. 48, §59A).

While there is substantial overlap among these three mutual aid laws, there are important differences between them that warrant jurisdictions joining each of the three agreements. For example, only the Public Works and Fire mutual aid laws permit crossing into adjoining states to send and receive assistance. The Fire mutual aid law also permits aid to any federal jurisdiction in the Commonwealth and serves as the backbone of the Statewide Fire Mobilization Plan. The Public Works mutual aid law permits mutual aid to support every day, non-emergency, operations while the Public Safety mutual aid law limits the provision of mutual aid under the agreement to "public safety incidents" as defined in the law.

Region I
P.O. Box 116
365 East Street
Tewksbury, MA 01876
Tel: 978-328-1500 Fax: 978-851-8218

Region II
P.O. Box 54
12-I Rear Administration Road
Bridgewater, MA 02324-0054
Tel: 508-427-0400 Fax: 508-697-8869

Region III / IV
1002 Suffield Street
Agawam, MA 01001
Tel: 413-821-1500 Fax: 413-821-1599

With the recent enactment of the Public Safety and Public Works mutual aid laws, the Commonwealth has, for the first time, comprehensive multi-discipline mutual aid statutes that provide a mechanism, or system for cities and towns which are impacted and overwhelmed by a public safety incident or disaster to ask for, and receive assistance from municipalities that may have resources to share. In addition, the new Public Works mutual aid law allows communities to share public works resources in support of every day, non-emergency work.

Even in strong economic times, most cities and towns do not have sufficient personnel and resources to quickly and effectively respond to and manage: mass casualties, widespread damage to infrastructure, numerous persons displaced from their homes, mass vaccinations or decontaminations, establishing food and water distribution sites, and the many other demands that large, and even small disasters place on municipal government. And, these are not strong economic times. Now, more than ever, cities and towns must rely on neighbors in times of emergency.

Likewise, state resources, once mustered, may not be sufficient to meet all urgent needs and demands in the aftermath of a widespread natural or man-made disaster that impacts many cities and towns.

What we know from experiences here in the Commonwealth and in other parts of the country, is that we need a strong, reliable mutual aid system that provides the platform for cities and towns to dispatch personnel and resources to other communities that are in need. We are not just talking about police and fire; we are talking about emergency management; emergency medical services; building inspectors; engineers; health agents and inspectors; transportation, water, sewer, highway, forestry, parks and cemetery personnel and resources; and communications capabilities.

Think back to the December 2008 widespread ice storm that left roads impassable in dozens of small communities in the central and western parts of the state. Just imagine how much more quickly we could have cleared downed utility lines and trees, and reopened roads if we could have drawn dump trucks, plows, chain saws, and highway department workers from the cities and towns in the southeastern and eastern parts of the state that were not touched by the storm.

Think further back to the explosion that rocked Danvers just a few years ago. With hundreds of buildings damaged or destroyed, Danvers had an urgent need for building inspectors to go building to building, and street to street, to assess the levels of damage, and overall safety of the impacted structures. While some municipal building inspectors from neighboring towns volunteered their services, they did so with significant liability and jurisdictional questions unanswered.

More recently, we anxiously monitored a strong hurricane (Hurricane Earl) that was threatening to make landfall on the Cape or Islands. This time we were fortunate—the storm took a more easterly path and weakened before it reached our area. But had this storm made landfall in Massachusetts as a Category 3 or Category 4 hurricane, damage to roads, bridges, utility systems, homes and businesses would have been extensive. Emergency services in the southeast part of the state would have been out straight, and demand for all types of public safety and municipal services would have exceeded capacity. Moreover, the everyday informal and formal systems of neighbor to neighbor mutual aid would not have worked because every community in the southeastern part of the state would have been in the same situation – not enough resources to meet the urgent needs of their residents.

Today, we have comprehensive mutual aid statutes that can facilitate mutual aid from neighboring cities and towns and communities in other parts of the state. By utilizing these statutes, impacted jurisdictions can quickly ask for and receive an array of resources such as police and fire personnel, municipal workers to staff shelters and food distribution sites, building inspectors, health inspectors, dump trucks, front-end loaders, generators, chain saws, Community Emergency Response Teams, and Medical Reserve Corps.

Each of these three mutual aid laws require a city, town or other governmental unit to affirmatively “opt-in” in order to participate in and enjoy the benefits of these mutual aid agreements. Each statute spells out the vote that a jurisdiction must take to opt-in to these mutual aid statutes. In order to maintain a central registry of cities and towns that have opted in to the mutual aid agreements, we ask that each jurisdiction notify MEMA, in writing, using the enclosed form, once it takes the required votes to opt-in to one or all of the mutual aid agreements.

Opting in to any of these agreements does not require a jurisdiction to provide mutual aid if doing so is not reasonable and practicable. A jurisdiction is permitted to withhold requested resources to the extent necessary to provide reasonable protection and coverage for its own jurisdiction or if it does not wish to bear the expense of providing mutual aid. Opting in to the Public Safety or Public Works mutual aid agreements **does not** affect, supersede or invalidate any other statutory or contractual mutual aid or assistance agreements. Additionally, a party may enter into supplementary mutual aid agreements with other parties or jurisdictions. A jurisdiction may also opt out of the Public Safety and Public Works agreements at any time by providing 10 days written notice to MEMA.

Ultimately, my hope is that your jurisdiction will opt-in to these three mutual aid statutes by taking the required votes. Today, I am urging you to move forward and adopt two of the mutual aid laws: the Statewide Mutual Aid Law and the Fire Mutual Aid Law. The third (the Statewide Public Works Mutual Aid Law) is not quite ready to be implemented; the Advisory Board that oversees its operation is still working on the necessary implementation documents.

I have enclosed the following documents to facilitate your jurisdiction's review and acceptance of the two mutual aid statutes:

- Summaries of the mutual aid statutes (the Public Works Mutual Aid Law also is summarized) (Attachment A);
- Instructions on the steps/actions your jurisdiction must take to opt-in to the Statewide Mutual Aid Agreement and the Fire Mutual Aid Agreement (Attachment B);
- Notification Form to complete and return to MEMA after your jurisdiction opts-in to one or both of the mutual aid agreements;

Should you have any questions, please contact MEMA's statewide mutual aid coordinator Allen Phillips at 508-820-1426 or at allen.phillips@state.ma.us.

Very truly yours,

A handwritten signature in cursive script that reads "Kurt N. Schwartz".

Kurt N. Schwartz

Undersecretary, Law Enforcement & Fire Services

Acting Director, Massachusetts Emergency Management Agency

Executive Office of Public Safety & Security

ATTACHMENT A
Summaries of Mutual Aid Laws

Chapter 40, Section 4J: Statewide Public Safety Mutual Aid

Creates a statewide public safety mutual aid agreement. Assistance provided under the agreement includes, but is not limited to, fire service, law enforcement, emergency medical services, transportation, communications, public works, engineering, building inspection, planning and information assistance, resource support, public health, health and medical services, search and rescue assistance and any other resource, equipment or personnel that a party to the agreement may request or provide in anticipation of, or in response to, a public safety incident.

Opt-in mutual aid agreement – If a city/town/governmental unit wishes to join the Agreement they must notify MEMA in writing. The city/town/governmental unit shall become a party to the agreement 30 days after MEMA's receipt of the written notification.

A city/town/governmental unit that has joined the agreement may opt out of the agreement by notifying MEMA in writing of its intention to opt out. A city/town/governmental unit's removal from the agreement takes effect 10 days after MEMA's receipt of the written notification.

A request by a party to receive mutual aid under this agreement shall be made, either orally or in writing, by an authorized representative of the requesting party to an authorized representative of the sending party or to MEMA. All oral requests shall be reduced to writing by the requesting party and delivered to the sending party at the earliest possible date, but not later than 72 hours after making the oral request.

The requesting party shall be responsible for the overall operation, assignment and deployment of resources and personnel provided by the sending party consistent with the incident command system. Unless otherwise agreed to, the sending party shall retain direct supervision, command and control of personnel, equipment and resources provided by the sending party. Unless the requesting and sending parties agree otherwise, the sending party shall be responsible for the operation of its equipment and for any damage thereto.

Unless the requesting and sending parties agree otherwise, the sending party shall pay all expenses, including salary and overtime, incurred by the sending party. A sending party shall document its costs of providing mutual aid assistance under the agreement. Except as otherwise agreed to by the parties, the requesting party shall seek reimbursement under any applicable federal and state disaster assistance programs for the cost of responding to the public safety incident. The requesting party and each sending party shall receive, based on the documented costs of providing mutual aid assistance, its pro rata share of the disaster assistance reimbursement provided to the requesting party.

While providing mutual aid assistance under the agreement, employees of the sending party shall be afforded the same powers and duties, rights and privileges as they are afforded in the sending party's geographical jurisdiction or location.

While in transit to, returning from and providing mutual aid assistance under the agreement, employees of a sending party shall have the same rights of defense, immunity and indemnification that they would otherwise have under the law if they were acting within the scope of their employment under the direction of their employer. A sending party shall provide to, and maintain for, each of its employees who provide mutual aid assistance under the agreement the same indemnification, defense, right to immunity, employee benefits, death benefits, workers' compensation or similar protection and insurance coverage that would be provided to those employees if they were performing similar services in the sending party's jurisdiction.

Each party to the agreement shall waive all claims and causes of action against each other party to the agreement that may arise out of their activities while rendering or receiving mutual aid under the agreement.

Each requesting party shall defend, indemnify and hold harmless each sending party from all claims by third parties for property damage and personal injury which may arise out of the activities of the sending party or its employees, including travel, while providing mutual aid assistance under the agreement.

This section shall not affect, supersede or invalidate any other statutory or contractual mutual aid or assistance agreements. A party may enter into supplementary mutual aid agreements with other parties or jurisdictions.

Chapter 40, Section 4K: Statewide Public Works Municipal Mutual Aid

Creates a statewide public works municipal mutual aid agreement. Assistance provided under the agreement includes, but is not limited to, services related to public works, personnel, equipment, supplies and facilities to prepare for, prevent, mitigate, respond to and recover from public works incidents. Participation in the agreement is also available to governmental units in states contiguous to the Commonwealth. Creates a statewide public works municipal mutual aid advisory committee to be chaired by the secretary of public safety and security or his designee.

Opt-in mutual aid agreement – If a city/town/governmental unit wishes to join the Agreement they must notify the mutual aid advisory committee in writing. The city/town/governmental unit shall become a party to the agreement 30 days after the advisory committee's receipt of the written notification.

A city/town/governmental unit that has joined the agreement may opt out of the agreement by notifying the advisory committee in writing of its intention to opt out. A city/town/governmental unit's removal from the agreement takes effect 10 days after the advisory committee's receipt of the written notification.

A request by a party to receive mutual aid under this agreement shall be made, either orally or in writing, by the chief executive officer of the requesting party or one of its designated points of contact to the chief executive officer or a designated point of contact of the sending party. All oral requests shall be reduced to writing by the requesting party and delivered to the sending party at the earliest possible date, but not later than 72 hours after making the oral request.

A party that receives a request for mutual aid assistance shall provide and make available, to the extent reasonable and practicable under the circumstances, the resources requested by the requesting party; provided, however, that a sending party may withhold requested resources to the extent necessary to provide reasonable protection and coverage for its own jurisdiction.

The requesting party shall be responsible for the overall operation, assignment and deployment of resources and personnel provided by the sending party. Unless otherwise agreed to, the sending party shall retain direct supervision, command and control of personnel, equipment and resources provided by the sending party. Unless the requesting and sending parties agree otherwise, the sending party shall be responsible for the operation of its equipment and for any damage thereto.

Unless the requesting and sending parties agree otherwise, the sending party shall pay all expenses, including salary and overtime, incurred by the sending party. A sending party shall document its costs of providing mutual aid assistance under the agreement. Except as otherwise agreed to by the parties, the requesting party shall seek reimbursement under any applicable federal and state disaster assistance programs for the cost of responding to the public works incident. The requesting party and each sending party shall receive, based on the documented costs of providing mutual aid assistance, its pro rata share of the disaster assistance reimbursement provided to the requesting party.

While providing mutual aid assistance under the agreement, employees of the sending party shall be afforded the same powers and duties, rights and privileges as they are afforded in the sending party's geographical jurisdiction or location. While providing mutual aid assistance under the agreement, employees of the sending party shall be considered similarly licensed, certified or permitted in the requesting party's jurisdiction if the employee holds a valid license, certificate or permit issued by the employee's governmental unit.

While in transit to, returning from and providing mutual aid assistance under the agreement, employees of a sending party shall have the same rights of defense, immunity and indemnification that they would otherwise have under the law if they were acting within the scope of their employment under the direction of their employer. A sending party shall provide to, and maintain for, each of its employees who provide mutual aid assistance under the agreement the same indemnification, defense, right to immunity, employee benefits, death benefits, workers' compensation or similar protection and insurance coverage that would be provided to those employees if they were performing similar services in the sending party's jurisdiction.

Each party to the agreement shall waive all claims and causes of action against each other party to the agreement that may arise out of their activities while rendering or receiving mutual aid under the agreement.

Each requesting party shall defend, indemnify and hold harmless each sending party from all claims by third parties for property damage and personal injury which may arise out of the activities of the sending party or its employees, including travel, while providing mutual aid assistance under the agreement.

All equipment requested and deployed pursuant to this agreement shall be insured by the sending party.

This section shall not affect, supersede or invalidate any other statutory or contractual mutual aid or assistance agreements. A party may enter into supplementary mutual aid agreements with other parties or jurisdictions.

Chapter 48, Section 59A: Fire Mutual Aid Law

M.G.L. Chapter 48, Section 59A authorizes cities and towns to voluntarily participate in rendering mutual aid fire response to another city, town, fire district or area under federal jurisdiction in the Commonwealth or an adjoining state.

Cities, towns, and fire districts may authorize such mutual aid by passing an ordinance or by-law or by vote of the aldermen, selectmen, or prudential committee or other boards exercising such powers.

Each city, town, or district wishing to participate in fire department mutual aid, must, at a minimum, vote to accept the provisions of Chapter 48, Section 59A. The jurisdiction may also authorize its department to enter into mutual aid agreements with any other city, town, or district or in adjoining states, or impose conditions or restrictions on rendering mutual aid. There should be a policy authorizing the fire department to participate in the statewide mutual aid plan, regional plans, or other plans, as approved by the city, town, or district.

Mutual aid covers the extinguishment of fire or rendering of any emergency aid or detail as ordered by the Head of the Fire Department. However, the ordinance, by-law or vote may place conditions or restrictions on the rendering of such aid.

Members of fire departments, while performing their duty in extending mutual aid, shall have the immunities and privileges as if performing those duties within their respective cities, towns or districts. (This includes immunity under the provisions of the Massachusetts Tort Claim Act, M.G.L. Chapter 258 as well as the Good Samaritan provisions for EMT's rendering treatment pursuant to Chapter 111C, section 21.)

In the absence of any agreement to the contrary, the municipality rendering aid is responsible for: damage to its own equipment; personal injury sustained or caused by a member of its fire department, and any payment it is required to make to a member of its fire department or their widows or dependants due to injury or death.

ATTACHMENT B
MUTUAL AID "OPT-IN" INSTRUCTIONS

The statutory requirements for jurisdictions to opt-in to the mutual aid agreement(s) are set forth below.

MGL c. 40, §§ 4J: Public Safety Mutual Aid Agreement

If a city or town wishes to join the Public Safety agreement, the mayor in the case of a city, the city manager in the case of a Plan D or Plan E city, or the town manager, town administrator or chairman of the board of selectmen with the approval by a majority of the board of selectmen, may act on behalf of the city or town to join the agreement by notifying the director of MEMA in writing.

If a governmental unit that is not a city or town wishes to join the agreement, the chief executive officer of the governmental unit may act on its behalf to join the agreement by notifying the director of MEMA in writing.

MGL c. 48, § 59A – Statewide Fire Mutual Aid Agreement

Cities, towns and fire districts may, by ordinance or by-law, or by vote of the board of aldermen, selectmen or of the prudential committee or board exercising similar powers, authorize their respective fire departments to go to aid another city, town, fire district or area under federal jurisdiction. Any such ordinance, by-law or vote may authorize the head of the fire department to extend such aid, subject to such conditions and restrictions as may be prescribed therein.

Once a jurisdiction has properly authorized joining one or both of the above listed mutual aid agreements, please complete each applicable section of the attached form (See Attachment C). Upon completion, please return the form to:

Massachusetts Emergency Management Agency
400 Worcester Road
Framingham, MA 01702-5399
Attn: Allen Phillips

ATTACHMENT C
MUTUAL AID "OPT-IN" FORM

CITY/TOWN/ DISTRICT OF _____

I hereby certify by my signature(s) below that the city/town/district or other governmental unit has authorized, in accordance with each of the applicable statutes, its participation in each of the mutual aid agreements indicated below (each individual section below must be completed for each agreement authorized).

MGL c. 40, §4J – Statewide Public Safety Mutual Aid Agreement

Signature _____ Date of Vote/Execution _____

Title _____

MGL c. 40, §4K – Statewide Public Works Municipal Mutual Aid Agreement

Signature _____ Date of Vote/Execution _____

Title _____

Once each applicable section of this form is completed please return the form to:

Massachusetts Emergency Management Agency
400 Worcester Road
Framingham, MA 01702-5399
Attn: Allen Phillips

**ATTACHMENT C
MUTUAL AID "OPT-IN" FORM**

CITY/TOWN/ DISTRICT OF _____

I hereby certify by my signature(s) below that the city/town/district or other governmental unit has authorized, in accordance with each of the applicable statutes, its participation in each of the mutual aid agreements indicated below (each individual section below must be completed for each agreement authorized).

MGL c. 40, §4J – Statewide Public Safety Mutual Aid Agreement

Date of Vote/Execution:

Name and Title of Certifying Official:

Signature of Certifying Official:

Telephone #:

Email Address:

MGL c. 48, §59A – Statewide Fire Mutual Aid Agreement

Date of Vote/Execution:

Name and Title of Certifying Official:

Signature of Certifying Official:

Telephone #:

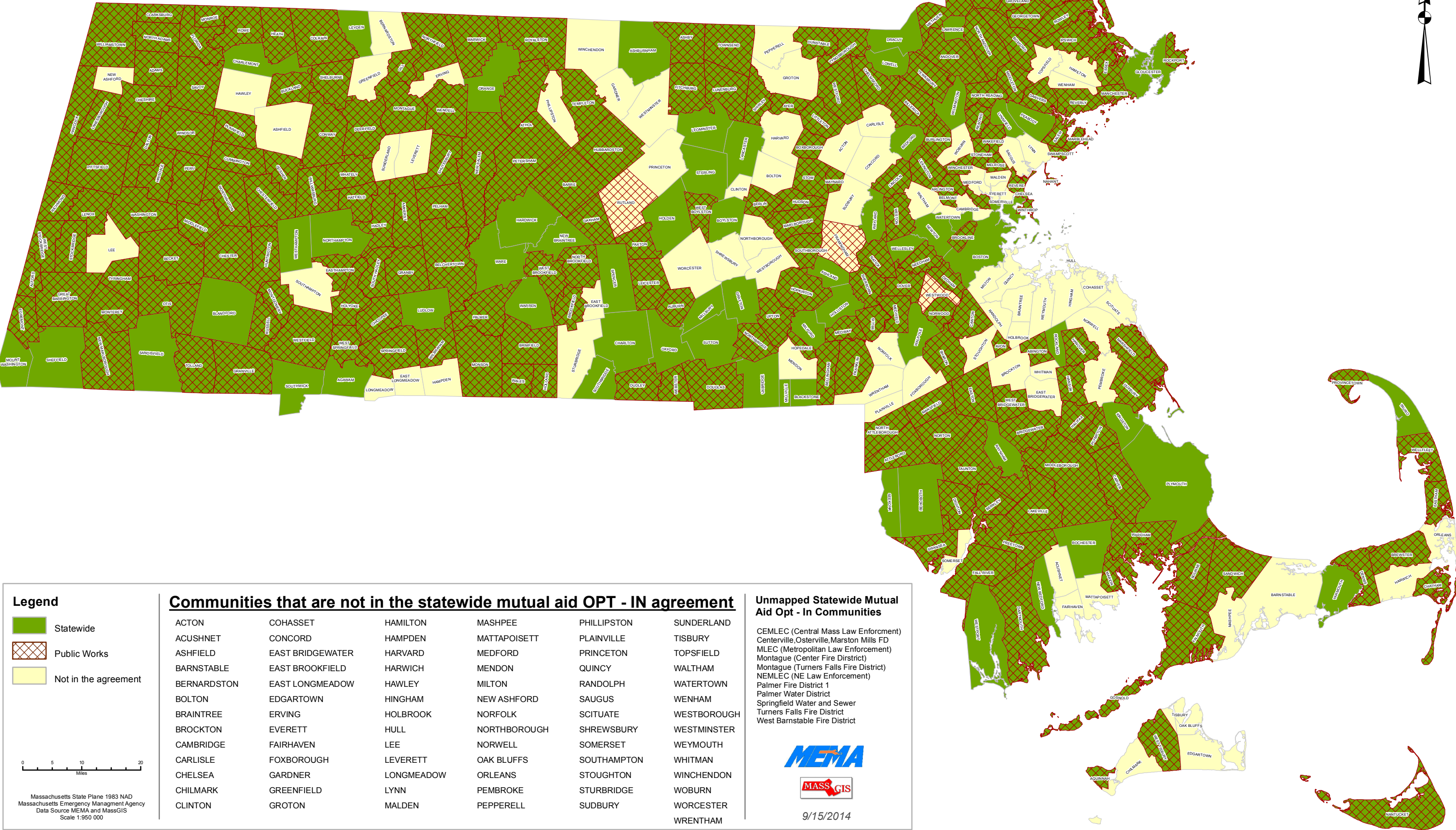
Email Address:

Once each applicable section of this form is completed please return the form to:

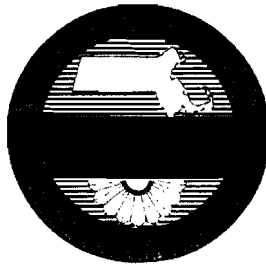
Massachusetts Emergency Management Agency
400 Worcester Road
Framingham, MA 01702-5399
Attn: Allen Phillips



STATEWIDE MUTUAL AID OPT - IN COMMUNITIES



ORGANIZED
NOVEMBER 3, 1887



INCORPORATED
MAY 2, 1949

EXECUTIVE DIRECTOR
CHIEF A. WAYNE SAMPSON (RET.)
GENERAL COUNSEL
JOHN M. COLLINS, ESQUIRE
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In Unity There Is Strength

MEMO

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Northborough

1st Vice President
Chief Joseph J. Rebello
Kingston

2nd Vice President
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Chief Steven A. Mazzie
Everett (Major City Chiefs)

Chief Edward P. Deveau
Watertown (Middlesex)

Chief Richard E. Smith
Wakefield (Middlesex)

Chief Terrence M. Cunningham
Wellesley (Norfolk)

Chief Donald H. Clark
West Bridgewater (Plymouth)

Chief Brian A. Kyes
Chelsea (Suffolk)

Chief Peter F. Roddy
Leominster (Worcester)

Chief Patrick T. Foley
Douglas (Worcester)

Life Member
Chief Edward M. Merrick (Ret.)
Plainville

January 27, 2011

To: Police Chiefs

From: Atty. John M. (Jack) Collins, General Counsel

Re: Statewide Mutual Aid Participation

HOW CAN A COMMUNITY TAKE PART?

Under the amendments to chapter 40, a city or town is authorized to “opt in” to coverage by the so-called “statewide mutual aid” agreement. Essentially, if a city or town wishes to join the agreement, the mayor in the case of a city, the city manager in the case of a Plan D or Plan E city, or the town manager, town administrator or chairman of the board of selectmen with the approval of the board of selectmen, may act on behalf of the city or town to join the agreement by notifying the director of MEMA in writing. If this happens, the municipality becomes a party to the agreement 30 days after receipt by MEMA of the written notification.

CAN A CITY OR TOWN LATER “OPT OUT”?

A city or town that has joined the agreement may opt out of the agreement in the same manner as provided for joining the agreement and by notifying MEMA in writing of its intention to opt out. The removal of the municipality from the agreement takes effect 10 days after receipt by MEMA of the written notification.

WHAT MUST A COMMUNITY DO TO “VOTE” OR “OPT IN”?

The first thing to keep in mind is that unlike most “local option” laws, this one does not require any action by either a Town Meeting or a City Council. (That may become an issue for a court challenge under the state’s Home Rule Amendment, but for now, chiefs should assume the procedure for adoption in the new law is valid.)

In a city

The mayor of a city, unless such city operates under either Plan D or Plan E, may decide to “opt in” and send a letter to the Director of MEMA notifying such agency of that decision.

If the city has a City Manager under either Plan D or Plan E, that Manager can send the same letter as the Mayor of another city would do.

In a town

The town manager, town administrator or chairman of the board of selectmen with the approval of the board of selectmen, may act on behalf of the city or town to join the agreement by notifying the director of MEMA in writing. The statute is a little ambiguous, but it appears that even a Town Manager should get the approval of the Board of Selectmen, just to be safe. (It is possible that such Manager could act on his or her own, just as a City manager can do, but why take the chance?) Clearly, if the town does not have a Town Manager, but either has a Town Administrator or Executive Secretary, or even if it has no similar position, a vote of the Board of Selectmen is required.

SAMPLE FORMS

MOTION BY BOARD OF SELECTMEN

I move that the Town join the so-called "statewide mutual aid agreement" established under Massachusetts General Laws chapter 40, section 4J to create a framework for the provision of mutual aid assistance among the parties to the agreement in the case of a public safety incident. The assistance to be provided under the agreement shall include, but not be limited to, fire service, law enforcement, emergency medical services, transportation, communications, public works, engineering, building inspection, planning and information assistance, resource support, public health, health and medical services, search and rescue assistance and any other resource, equipment or personnel that a party to the agreement may request or provide in anticipation of, or in response to, a public safety incident.

NOTICE LETTER

(retype on city or town letterhead)

Date:_____

Director
Massachusetts Emergency Management Agency
400 Worcester Road

Framingham, MA 01702-5399

Re: Statewide Mutual Aid

Dear Director:

Be advised that this municipality has decided to “opt in” to the so-called statewide mutual aid agreement established under MGL c. 40, s. 4J.

Sincerely,