

1 **Tennessee Water/Wastewater Agency Response Network**
2 **(TnWARN) Mutual Aid and Assistance Agreement**

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5 **AGREEMENT**
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7 This Agreement is made and entered into by Tennessee public and private Water and
8 Wastewater Utilities that have, by executing this Agreement, manifested their intent to
9 participate in an Intrastate Program for Mutual Aid and Assistance.

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11 Statutory Authority –This Agreement is authorized under TCA 58-8-101 et al., which provides
12 that Water and Wastewater Utilities may contract with each other to provide services.
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15 **ARTICLE I.**
16 **PURPOSE**
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18 Recognizing that emergencies may require aid or assistance in the form of personnel,
19 equipment, and supplies from outside the area of impact, the signatory utilities hereby establish
20 an Intrastate Program for Mutual Aid and Assistance. Through the Mutual Aid and Assistance
21 Program, Members coordinate response activities and share resources during emergencies.
22 This Agreement sets forth the procedures and standards for the administration of the Intrastate
23 Mutual Aid and Assistance Program.
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26 **ARTICLE II.**
27 **DEFINITIONS**
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- 29 A. Authorized Official – An employee or officer of a Member utility that is authorized to:
30 1. Request assistance;
31 2. Offer assistance;
32 3. Refuse to offer assistance or
33 4. Withdraw assistance under this agreement.
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- 35 B. Emergency – A natural or human caused event or circumstance causing, or imminently
36 threatening to cause, loss of life, injury to person or property, human suffering or financial
37 loss, and includes, but is not limited to, fire, explosion, flood, severe weather, drought,
38 earthquake, volcanic activity, spills or releases of oil or hazardous material, contamination,
39 utility or transportation emergencies, disease, blight, infestation, civil disturbance, riot,
40 intentional acts, sabotage and war that is, or could reasonably be beyond the capability of
41 the services, personnel, equipment, and facilities of a Mutual Aid and Assistance Program
42 Member to fully manage and mitigate internally.
43
- 44 C. Members – Any public or private Water or Wastewater Utility that manifests intent to
45 participate in the Mutual Aid and Assistance Program by executing this Agreement.
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- 47 1. Associate Member – Any non utility participant, approved by the State Steering
48 Committee, that provides a support role for the WARN program, for example State
49 Department of Public Health, or associations, who are members of the Regional or State
50 Steering Committees 1 and do not officially sign the WARN agreement.
51

- 1 2. Requesting Member – A Member who requests aid or assistance under the Mutual Aid
2 and Assistance Program.
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- 4 3. Responding Member – A Member that responds to a request for aid or assistance under
5 the Mutual Aid and Assistance Program.
- 6
- 7 4. Non-Responding Member - A Member or Associate Member that does not provide aid or
8 assistance during a Period of Assistance under the Mutual Aid and Assistance Program.
- 9
- 10 D. Confidential Information - Any document shared with any signatory of this Agreement that is
11 marked confidential, including but not limited to any map, report, notes, papers, opinion, or
12 e-mail which relates to the system vulnerabilities of a Member or Associate Member.
- 13
- 14 E. Period of Assistance – A specified period of time when a Responding Member assists a
15 Requesting Member. The period commences when personnel, equipment, or supplies
16 depart from Responding Member’s facility and ends when the resources return to their
17 facility (portal to portal). All protections identified in the agreement apply during this period.
18 The specified Period of Assistance may occur during response to or recovery from an
19 emergency, as previously defined.
- 20
- 21 F. National Incident Management System (NIMS): A national, standardized approach to
22 incident management and response that sets uniform processes and procedures for
23 emergency response operations.
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26 **ARTICLE III.**
27 **ADMINISTRATION**
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29 The Mutual Aid and Assistance Program shall be administered through Regional Committees, to
30 include West, Middle and East regions, and a Statewide Committee. The purpose of a Regional
31 Committee is to provide local coordination of the Mutual Aid and Assistance Program before,
32 during, and after an emergency. The designated regions are consistent with the existing public
33 health or emergency management regions of the state. Each Region Committee, under the
34 leadership of an elected Chairperson, shall meet annually to address Mutual Aid and Assistance
35 Program issues. Each Region Committee shall also meet annually to review emergency
36 preparedness and response procedures. The Chairperson of each Regional Committee
37 represents their Regional Committee’s interests on the Statewide Committee. In addition to
38 representing the interests of the Members, the Statewide Committee includes representatives
39 from TAUD, AWWA, WEA, MTAS, TEMA, TDEC, and TDH. Under the leadership of the Chair,
40 the Statewide Committee members shall plan and coordinate emergency planning and
41 response activities for the Mutual Aid and Assistance Program.
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44 **ARTICLE IV.**
45 **PROCEDURES**
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47 In coordination with the Regional Committees, emergency management and public health
48 system of the state, the Statewide Committee shall develop operational and planning
49 procedures for the Mutual Aid and Assistance Program. These procedures shall be reviewed at
50 least annually and updated as needed by the Statewide Steering Committee.
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3 **ARTICLE V.**
4 **REQUESTS FOR ASSISTANCE**

- 5 A. Member Responsibility: Members shall identify an Authorized Official and alternates;
6 provide contact information including 24-hour access. and maintain resource information
7 that may be available from the utility for mutual aid and assistance response. Such contact
8 information shall be updated annually or when changes occur, provided to the State
9 Steering Committee.

10
11 In the event of an Emergency, a Member's Authorized Official may request mutual aid and
12 assistance from a participating Member. Requests for assistance can be made orally or in
13 writing. When made orally, the request for personnel, equipment, and supplies shall be
14 prepared in writing as soon as practicable. Requests for assistance shall be directed to the
15 Authorized Official of the participating Member. Specific protocols for requesting aid shall
16 be provided in the required procedures (Article IV).

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18 B. Response to a Request for Assistance – Members of the agreement are not obligated to
19 respond to a request. After a Member receives a request for assistance, the Authorized
20 Official evaluates whether or not to respond, whether resources are available to respond, or
21 if other circumstances would hinder response. Following the evaluation, the Authorized
22 Representative shall inform, as soon as possible, the Requesting Member whether it will
23 respond. If the Member is willing and able to provide assistance, the Member shall inform
24 the Requesting Member about the type of available resources and the approximate arrival
25 time of such assistance.

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27 C. Discretion of Responding Member's Authorized Official – Execution of this Agreement does
28 not create any duty to respond to a request for assistance. When a Member receives a
29 request for assistance, the Authorized Official shall have sole and absolute discretion as to
30 whether or not to respond, or the availability of resources to be used in such response. An
31 Authorized Member's decisions on the availability of resources shall be final.

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34 **ARTICLE VI.**
35 **RESPONDING MEMBER PERSONNEL**

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37 A. National Incident Management System (NIMS) - When providing assistance under this
38 Agreement, the Requesting Utility and Responding Utility shall be organized and shall
39 function under the National Incident Management System.

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41 B. Control - While employees so provided may be under the supervision of the Responding
42 Member, the Responding Member's employees come under the direction and control of the
43 Requesting Member, consistent with the NIMS Incident Command System to address the
44 needs identified by the Requesting Member. The Requesting Member's Authorized Official
45 shall coordinate response activities with the designated supervisor(s) of the Responding
46 Member(s). The Responding Member's designated supervisor(s) must keep accurate
47 records of work performed by personnel during the specified Period of Assistance.

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49 C. Food and Shelter – Whenever practical, Responding Member personnel must be self
50 sufficient for up to 72 hours. When possible, the Requesting Member shall supply
51 reasonable food and shelter for Responding Member personnel. If the Requesting Member

1 is unable to provide food and shelter for Responding personnel, the Responding Member's
2 designated supervisor is authorized to secure the resources necessary to meet the needs of
3 its personnel. Except as provided below, the cost for such resources must not exceed the
4 State per diem rates for that area. To the extent Food and Shelter costs exceed the State
5 per diem rates for the area, the Responding Member must demonstrate that the additional
6 costs were reasonable and necessary under the circumstances. Unless otherwise agreed
7 to in writing, the Requesting Member remains responsible for reimbursing the Responding
8 Member for all reasonable and necessary costs associated with providing food and shelter,
9 if such resources are not provided.

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- 11 D. Communication – The Requesting Member shall provide Responding Member personnel
12 with radio equipment as available, or radio frequency information to program existing radio,
13 in order to facilitate communications with local responders and utility personnel.
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- 15 E. Status - Unless otherwise provided by law, the Responding Member's officers and
16 employees retain the same privileges, immunities, rights, duties and benefits as provided in
17 their respective jurisdictions.
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- 19 F. Licenses and Permits – To the extent permitted by law, Responding Member personnel that
20 hold licenses, certificates, or permits evidencing professional, mechanical, or other skills
21 shall be allowed to carry out activities and tasks relevant and related to their respective
22 credentials during the specified Period of Assistance.
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- 24 G. Right to Withdraw - The Responding Member's Authorized Official retains the right to
25 withdraw some or all of its resources at any time for any reason in the Responding
26 Member's sole and absolute discretion. Notice of intention to withdraw must be
27 communicated to the Requesting Member's Authorized Official as soon as soon as is
28 practicable under the circumstances.
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31 **ARTICLE VII.**
32 **COST- REIMBURSEMENT**

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34 Unless otherwise mutually agreed in whole or in part, the Requesting Member shall reimburse
35 the Responding Member for each of the following categories of costs incurred during the
36 specified Period of Assistance as agreed in whole or in part by both parties; provided, that any
37 Responding Member may assume in whole or in part such loss, damage, expense, or other
38 cost, or may loan such equipment or donate such services to the Requesting Member without
39 charge or cost.

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- 42 A. Personnel – The Responding Member shall be reimbursed by the Requesting Member for
43 personnel costs incurred for work performed during the specified Period of Assistance.
44 Responding Member personnel costs shall be calculated according to the terms provided in
45 their employment contracts or other conditions of employment. The Responding Member's
46 designated supervisor(s) must keep accurate records of work performed by personnel
47 during the specified Period of Assistance. Requesting Member reimbursement to the
48 Responding Member could consider all personnel costs, including salaries or hourly wages,
49 costs for fringe benefits, and indirect costs.
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- 1 B. Equipment – The Requesting Member shall reimburse the Responding Member for the use
2 of equipment during the specified Period of Assistance, including, but not limited to,
3 reasonable rental rates, all fuel, lubrication, maintenance, transportation, and
4 loading/unloading of loaned equipment. All equipment shall be returned to the Responding
5 Member in good working order as soon as is practicable and reasonable under the
6 circumstances. As a minimum, rates for equipment use must be based on the Federal
7 Emergency Management Agency’s (FEMA) Schedule of Equipment Rates. If a Responding
8 Member uses rates different from those in the FEMA Schedule of Equipment Rates, the
9 Responding Member must provide such rates orally or in writing to the Requesting Member
10 prior to supplying the equipment. Mutual agreement on which rates are used must be
11 reached in writing prior to dispatch of the equipment. Reimbursement for equipment not
12 referenced on the FEMA Schedule of Equipment Rates must be developed based on actual
13 recovery of costs. If Responding Member must lease a piece of equipment while its
14 equipment is being repaired, Requesting Member shall reimburse Responding Member for
15 such rental costs.
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- 17 C. Materials and Supplies – The Requesting Member must reimburse the Responding Member
18 in kind or at actual replacement cost, plus handling charges, for use of expendable or non-
19 returnable supplies. The Responding Member must not charge direct fees or rental charges
20 to the Requesting Member for other supplies and reusable items that are returned to the
21 Responding Member in a clean, damage-free condition. Reusable supplies that are
22 returned to the Responding Member with damage must be treated as expendable supplies
23 for purposes of cost reimbursement.
24
- 25 D. Payment Period – The Responding Member must provide an itemized bill to the Requesting
26 Member for all expenses incurred by the Responding Member while providing assistance
27 under this Agreement. The Responding Member must send the itemized bill not later than
28 (90) ninety days following the end of the Period of Assistance. The Responding Member
29 may request additional periods of time within which to submit the itemized bill and
30 Requesting Member shall not unreasonably withhold consent to such request. The
31 Requesting Member must pay the bill in full on or before the forty-fifth (45th) day following
32 the billing date. The Requesting Member may request additional periods of time within
33 which to pay the itemized bill and Responding Member shall not unreasonably withhold
34 consent to such request, provided, however, that all payment shall occur not later than one-
35 year after the date a final itemized bill is submitted to the Requesting Member.
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- 37 E. Records - Each Responding Member and their duly authorized representatives shall have
38 access to a Requesting Member’s books, documents, notes, reports, papers and records
39 which are directly pertinent to this Agreement for the purposes of reviewing the accuracy of
40 a cost bill or making a financial, maintenance or regulatory audit. Each Requesting Member
41 and their duly authorized representatives shall have access to a Responding Member’s
42 books, documents, notes, reports, papers and records which are directly pertinent to this
43 Agreement for the purposes of reviewing the accuracy of a cost bill or making a financial,
44 maintenance or regulatory audit. Such records shall be maintained for at least three (3)
45 years or longer where required by law.
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ARTICLE VIII.
DISPUTES

16 If any controversy or claim arises out of, or relates to, the execution of the Agreement, including,
17 but not limited to, alleged breach of the Agreement, the disputing Members shall first attempt to
18 resolve the dispute by negotiation, followed by mediation and finally shall be settled by
19 arbitration in accordance with the Rules of the American Arbitration Association. Any court of
20 competent jurisdiction may enter the judgment rendered by the arbitrators as final judgment that
21 is binding on the parties.
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ARTICLE IX.
REQUESTING MEMBER'S DUTY TO INDEMNIFY

32 The Requesting Member shall assume the defense of, fully indemnify and hold harmless, the
33 Responding Member, its officers and employees, from all claims, loss, damage, injury and
34 liability of every kind, nature and description, directly or indirectly arising from Responding
35 Member's work during a specified Period of Assistance. The scope of the Requesting
36 Member's duty to indemnify includes, but is not limited to, suits arising from, or related to,
37 negligent or wrongful use of equipment or supplies on loan to the Requesting Member, or faulty
38 workmanship or other negligent acts, errors or omissions by Requesting Member or the
39 Responding Member personnel.
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43 The Requesting Member's duty to indemnify is subject to, and shall be applied consistent with,
44 the conditions set forth in Article X.
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ARTICLE X.
SIGNATORY INDEMNIFICATION

52 In the event of a liability, claim, demand, action, or proceeding of whatever kind or nature arising
53 out of a specified Period of Assistance, the Members who receive and provide assistance shall
54 have a duty to defend, indemnify, save and hold harmless all Non-Responding Members, their
55 officers, agents and employees from any liability, claim, demand, action, or proceeding of
56 whatever kind or nature arising out of a Period of Assistance.
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ARTICLE XI.
WORKER'S COMPENSATION CLAIMS

64 The Responding Member is responsible for providing worker's compensation benefits and administering
65 worker's compensation for its employees. The Requesting Member is responsible for providing worker's
66 compensation benefits and administering worker's compensation for its employees.
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ARTICLE XII.
NOTICE

74 A Member who becomes aware of a claim or suit that in anyway, directly or indirectly,
75 contingently or otherwise, affects or might affect other Members of this Agreement shall provide

1 prompt and timely notice to the Members who may be affected by the suit or claim. Each
2 Member reserves the right to participate in the defense of such claims or suits as necessary to
3 protect its own interests.
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6 **ARTICLE XIII.**
7 **INSURANCE**
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9 Members of this Agreement shall maintain an insurance policy or maintain a self insurance
10 program that covers activities that it may undertake by virtue of membership in the Mutual Aid
11 and Assistance Program.
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14 **ARTICLE XIV.**
15 **CONFIDENTIAL INFORMATION**
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17 To the extent provided by law, any Member or Associate Member shall maintain in the strictest
18 confidence and shall take all reasonable steps necessary to prevent the disclosure of any
19 Confidential Information disclosed under this Agreement. If any Member, Associate Member,
20 third party or other entity requests or demands, by subpoena or otherwise, that a Member or
21 Associate Member disclose any Confidential Information disclosed under this Agreement, the
22 Member or Associate Member shall immediately notify the owner of the Confidential Information
23 and shall take all reasonable steps necessary to prevent the disclosure of any Confidential
24 Information by asserting all applicable rights and privileges with respect to such information and
25 shall cooperate fully in any judicial or administrative proceeding relating thereto.
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28 **ARTICLE XV.**
29 **EFFECTIVE DATE**
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31 This Agreement shall be effective after the Water and Wastewater Utility's authorized
32 representative executes the Agreement and the applicable Regional Committee Chair receives
33 the Agreement. The Regional Committee Chair shall maintain a list of all Members in the
34 respective region. The Statewide Committee Chair shall maintain a master list of all members
35 of the Mutual Aid and Assistance Program. The Regional Committee Chairs shall maintain a list
36 of all Members in their respective region.
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1 **ARTICLE XVI.**
2 **WITHDRAWAL**
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4 A Member may withdraw from this Agreement by providing written notice of its intent to
5 withdraw to the applicable Regional Committee Chair and the Statewide Chair. Withdrawal
6 takes effect 60 days after the appropriate officials receive notice. Withdrawal from this
7 Agreement shall in no way affect a Requesting Member's duty to reimburse a Responding
8 Member for cost incurred during a Period of Assistance, which duty shall survive such
9 withdrawal.
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11 **ARTICLE XVII.**
12 **MODIFICATION**
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15 No provision of this Agreement may be modified, altered or rescinded by individual parties to the
16 Agreement. Modifications to this Agreement may be due to programmatic operational changes
17 to support the agreement, legislative action, creation of an interstate aid and assistance
18 agreement, or other developments. Modifications require a simple majority vote of Members
19 within each region and a unanimous agreement between the regions. The Statewide
20 Committee Chair must provide written notice to all Members of approved modifications to this
21 Agreement. Approved modifications take effect 60 days after the date upon which notice is sent
22 to the Members.
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24 **ARTICLE XVIII.**
25 **SEVERABILITY**
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28 The parties agree that if any term or provision of this Agreement is declared by a court
29 of competent jurisdiction to be illegal or in conflict with any law, the validity of the
30 remaining terms and provisions shall not be affected, and the rights and obligations of
31 the parties shall be construed and enforced as if the Agreement did not contain the
32 particular term or provision held to be invalid.
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34 **ARTICLE XIX.**
35 **PRIOR AGREEMENTS**
36

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38 This Agreement supersedes all prior Agreements between Members to the extent that such
39 prior Agreements are inconsistent with this Agreement.
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41 **ARTICLE XX.**
42 **PROHIBITION ON THIRD PARTIES AND ASSIGNMENT OF RIGHTS/DUTIES**
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45 This Agreement is for the sole benefit of the Members and no person or entity must have any
46 rights under this Agreement as a third-party beneficiary. Assignments of benefits and
47 delegations of duties created by this Agreement are prohibited and must be without effect.

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ARTICLE XXI.
INTRASTATE AND INTERSTATE MUTUAL AID AND ASSISTANCE PROGRAMS

To the extent practicable, Members of this Agreement shall participate in Mutual Aid and Assistance activities conducted under the State of XXX Intrastate Mutual Aid and Assistance Program and the Interstate Emergency Management Assistance Compact (EMAC). Members may voluntarily agree to participate in an interstate Mutual Aid and Assistance Program for water and wastewater utilities through this Agreement if such a Program were established.

Now, therefore, in consideration of the covenants and obligations set forth in this Agreement, the Water and Wastewater Utility listed here manifests its intent to be a Member of the Intrastate Mutual Aid and Assistance Program for Water and Wastewater Utilities by executing this Agreement on this _____ day of _____ .

date month year

Water/Wastewater Utility: _____

By: _____

By: _____

Title: _____

Title: _____

Please Print Name

Please Print Name

Approved as to form and legality

By: _____

Attorney for Utility

Please Print Name