

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

AGREEMENT

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

This Agreement is authorized under TCA 58-8-101 et al., which provides that Water and Wastewater Utilities may contract with each other to provide services.

ARTICLE I. PURPOSE

Recognizing that emergencies may require assistance in the form of personnel, equipment, and supplies from outside the area of impact, the signatory utilities established an Intrastate Program for Mutual Aid and Assistance. Through the Mutual Aid and Assistance Program, Members coordinate response activities and share resources during emergencies. This Agreement sets forth the procedures and standards for the administration of the Intrastate Mutual Aid and Assistance Program.

ARTICLE II. DEFINITIONS

A. Emergency - A natural or manmade event that is, or is likely to be, beyond the control of the services, personnel, equipment, and facilities of a Mutual Aid and Assistance Program Member.

B. Member - Any public or private Water or Wastewater Utility that manifests intent to participate in the Mutual Aid and Assistance Program by executing this Agreement.

C. Authorized Official - An employee of a Member that is authorized by the Member's governing board or management to request assistance or offer assistance under this Agreement.

D. Requesting Member - A Member who requests assistance under the Mutual Aid and Assistance Program.

E. Responding Member - A Member that responds to a request for assistance under the Mutual Aid and Assistance Program.

F. Period of Assistance - A specified period of time when a Responding Member assists a Requesting Member. The period commences when personnel, equipment, or supplies depart from a Responding Member's facility and ends when the resources return to their facility (portal to portal). All protections identified in the agreement apply during this period. The specified Period of Assistance may occur during response to or recovery from an emergency, as previously defined.

G. National Incident Management System (NIMS) - A national, standardized approach to incident management and response that sets uniform processes and procedures for emergency response operations. This format is helpful in the processing of potential governmental cost-recovery if the response is part of or deemed to be as a result of a declared emergency.

ARTICLE III. ADMINISTRATION

The Mutual Aid and Assistance Program shall be administered through Regional Committees to include West, Middle and East regions and a Statewide Committee. The purpose of a Regional Committee is to provide local coordination of the Mutual Aid and Assistance Program before, during, and after an emergency. The designated regions are consistent with the existing public health or emergency management regions of the state. Each Region Committee, under the leadership of an elected Chairperson, shall meet annually to address Mutual Aid and Assistance Program issues. Each Regional Committee shall also meet annually to review emergency preparedness and response procedures. The Chairperson of each Regional Committee represents their Regional Committee's interests on the Statewide Committee. In addition to representing the interests of the Members, the Statewide Committee includes representatives from TAUD, AWWA, WEA, MTAS, TEMA, TDEC, and TDH. Under the leadership of the Chair, the Statewide Committee members shall plan and coordinate emergency planning and response activities for the Mutual Aid and Assistance Program.

ARTICLE IV. PROCEDURES

In coordination with the Regional Committees, emergency management, and the public health system of the state, the Statewide Committee shall develop operational and planning procedures for the Mutual Aid and Assistance Program. These procedures shall be updated as needed.

ARTICLE V. REQUESTS FOR ASSISTANCE

Member Responsibility: Members shall identify an Authorized Official and alternates; provide contact information including 24-hour access; and maintain resource information made available by the utility for mutual aid and assistance response.

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

Response to a Request for Assistance: After a Member receives a request for assistance, the Authorized Official evaluates whether resources are available to respond to the request for assistance. Following the evaluation, the Authorized Representative shall inform, as soon as possible, the Requesting Member whether it has the resources to respond. If the Member is willing and able to provide assistance, the Member shall inform the Requesting Member about the type of available resources and the approximate arrival time of such assistance.

Discretion of Responding Member's Authorized Official: Execution of this Agreement does not create any duty to respond to a request for assistance. When a Member receives a request for assistance, the Authorized Official shall have absolute discretion as to the availability of resources. An Authorized Member's decisions on the availability of resources shall be final.

ARTICLE VI. RESPONDING MEMBER PERSONNEL

National Incident Management System: When providing assistance under this Agreement, the Requesting Utility and Responding Utility shall be organized and shall function under the National Incident Management System.

Control: Responding Member personnel shall remain under the direction and control of the Responding Member. The Requesting Member's Authorized Official shall coordinate response activities with the designated supervisor(s) of the Responding Member(s). Whenever practical, Responding Member personnel must be self-sufficient for up to 72 hours.

Food and Shelter: The Requesting Member shall supply reasonable food and shelter for Responding Member personnel. If the Requesting Member fails to provide food and shelter for Responding personnel, the Responding Member's designated supervisor is authorized to secure the resources necessary to meet the needs of its personnel. The cost for such resources must not exceed the State per diem rates for that area. The Requesting Member remains responsible for reimbursing the Responding Member for all costs associated with providing food and shelter, if such resources are not provided.

Communication: The Requesting Member shall provide Responding Member personnel with radio equipment as available, or radio frequency information to program existing radio, in order to facilitate communications with local responders and utility personnel.

Status: Unless otherwise provided by law, the Responding Member's officers and employees retain the same privileges, immunities, rights, duties, and benefits as provided in their respective jurisdictions.

Licenses and Permits: To the extent permitted by law, Responding Member personnel who hold licenses, certificates, or permits evidencing professional, mechanical, or other skills shall be allowed to carry out activities and tasks relevant and related to their respective credentials during the specified Period of Assistance.

Right to Withdraw: The Responding Member's Authorized Official retains the right to withdraw some or all of its resources at any time. Notice of intention to withdraw must be communicated to the Requesting Member's Authorized Official as soon as possible.

ARTICLE VII. COST REIMBURSEMENT

Unless otherwise mutually agreed in whole or in part, the Requesting Member shall reimburse the Responding Member for each of the following categories of costs incurred while providing aid and assistance during the specified Period of Assistance.

Personnel: Responding Member personnel are to be paid for work completed during a specified Period of Assistance according to the terms provided in their employment contracts or other conditions of employment. The Responding Member designated supervisor(s) must keep accurate records of work performed by personnel during the specified Period of Assistance. Requesting Member reimbursement to the Responding Member must consider all personnel costs, including salaries or hourly wages, costs for fringe benefits, and indirect costs.

Equipment: The Requesting Member shall reimburse the Responding Member for the use of equipment during a specified Period of Assistance. As a minimum, rates for equipment use must be based on the current Federal Emergency Management Agency's (FEMA) Schedule of Equipment Rates. If a Responding Member uses rates different from those in the FEMA Schedule of Equipment Rates, the Responding Member must provide such rates in writing to the Requesting Member prior to supplying resources. Mutual agreement on which rates are

used must be reached in writing prior to dispatch of the equipment. Reimbursement for equipment not referenced on the FEMA Schedule of Equipment Rates must be developed based on actual recovery of costs.

Materials and Supplies: The Requesting Member must reimburse the Responding Member in kind or at actual replacement cost, plus handling charges, for use of expendable or nonreturnable supplies. The Responding Member must not charge direct fees or rental charges to the Requesting Member for other supplies and reusable items that are returned to the Responding Member in a clean, damage-free condition. Reusable supplies that are returned to the Responding Member with damage must be treated as expendable supplies for purposes of cost reimbursement.

Payment Period: The Responding Member must provide an itemized bill to the Requesting Member for all expenses it incurred as a result of providing assistance under this Agreement. The Requesting Member must send the itemized bill not later than ninety (90) days following the end of the Period of Assistance. The Requesting Member must pay the bill in full on or before the forty-fifth (45th) day following the billing date, unless circumstances arise that cause both parties to agree to an alternate billing and payment schedule. Unpaid bills become delinquent upon the forty-sixth (46th) day following the billing date, and, once delinquent, the bill accrues interest at the rate of prime, as reported by the *Wall Street Journal*, plus two percent (2%) per annum.

ARTICLE VIII. DISPUTES

Any controversy or claim arising out of, or relating to, this Agreement, including, but not limited to, alleged breach of the Agreement, shall be settled using a two-tiered process. The first tier shall be non-binding mediation and both parties will participate in selection of a mediator. If an amicable resolution is not reached, the process may advance to the second tier, which is arbitration in accordance with the Rules of the American Arbitration Association. Any court of competent jurisdiction may enter the judgment rendered by the arbitrators as final judgment that is binding on the parties.

ARTICLE IX. WORKERS COMPENSATION CLAIMS

The Requesting Member shall reimburse the Responding Member for all costs, benefits, and expenses associated with worker's compensation and other claims that arise from or are related to providing assistance under this Agreement. Reimbursement shall be made on a quarterly basis, or on other terms mutually agreed upon by the Requesting Member and Responding Member.

ARTICLE X. NOTICE

A Member who becomes aware of a claim or suit that in any way, directly or indirectly, contingently or otherwise, affects or might affect other Members of this Agreement shall provide prompt and timely notice to the Members who may be affected by the suit or claim. Each Member reserves the right to participate in the defense of such claims or suits as necessary to protect its own interests.

ARTICLE XI. INSURANCE

Members of this Agreement shall maintain liability policies or self-insurance programs that covers activities that it may undertake by virtue of membership in the Mutual Aid and Assistance Program. The scope of the policy must include, at a minimum, coverage for

employee faulty workmanship and other negligent acts, errors, or omissions.

ARTICLE XII. EFFECTIVE DATE

This Agreement shall be effective after the Water and Wastewater Utility's authorized representative executes the Agreement and the Statewide Committee Chair receives the Agreement.. The Statewide Committee Chair will then forward a copy of the agreement to the appropriate Regional Committee Chair. The Statewide Committee Chair shall maintain a master list of all members of the Mutual Aid and Assistance Program. The Regional Committee Chairs shall maintain a list of all Members in their respective region.

ARTICLE XIII. WITHDRAWAL

A Member may withdraw from this Agreement by providing written notice of its intent to withdraw to the applicable Regional Committee Chair and the Statewide Chair. Withdrawal takes effect 90 days after these officials receive notice.

ARTICLE XIV. MODIFICATION

No provision of this Agreement may be modified, altered, or rescinded by individual parties to the Agreement. Modifications to this Agreement may be due to programmatic operational changes to support the agreement. Modifications require a simple majority vote of Members within each region and a unanimous agreement among the regions. The Statewide Committee Chair must provide written notice to all Members of approved modifications to this Agreement. Approved modifications take effect 60 days after the date upon which notice is sent to the Members.

ARTICLE XV. PRIOR AGREEMENTS

This Agreement supersedes all prior Agreements between Members to the extent that such prior Agreements are inconsistent with this Agreement.

ARTICLE XVI. PROHIBITION ON THIRD PARTIES AND ASSIGNMENT OF RIGHTS/DUTIES

This Agreement is for the sole benefit of the Members and no person or entity must have any rights under this Agreement as a third-party beneficiary. Assignments of benefits and delegations of duties created by this Agreement are prohibited and must be without effect.

ARTICLE XVII. 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 Tennessee 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.

ARTICLE XVIII.

COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT

Members will comply with Title VI of the Civil Rights Acts of 1964 and will not engage in employment discrimination on the basis of race, color, national origin, sex, or religion.

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 _____.

This agreement may be executed in counterparts. Each such counterpart shall be deemed an original.

Water/Wastewater Utility: _____

By: _____

By: _____

Title: _____

Title: _____

Approved as to form
