

SOUTH CAROLINA WATER & WASTEWATER AGENCY RESPONSE NETWORK

Mutual Aid and Assistance Agreement for Water And Wastewater Utilities

(Effective October 3, 2011 – Supersedes all prior versions)

AGREEMENT

This Agreement is made and entered into by 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.

South Carolina Code of Laws Section 25-1-450 requires that State, county and municipal governments cooperate in developing and maintaining a plan for mutual assistance in emergencies and Section 6-11-1810 allows mutual aid assistance between municipalities, fire districts, fire protection agencies and other emergency service entities. This Agreement is made pursuant to that statutory authority.

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

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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.

H. SCWARN – The South Carolina Water & Wastewater Agency Response Network (SCWARN) is a mechanism to provide utilities and governmental agencies throughout the state a method by which to establish intrastate mutual aid and assistance networks. The purpose of these networks is to provide a framework for utilities to receive rapid, short-term deployment of emergency aid to restore services to utilities that have sustained damages from natural or man-made events.

ARTICLE III. ADMINISTRATION

The Mutual Aid and Assistance Program shall be administered through a statewide SCWARN Steering Committee. The purpose of the Steering Committee is to set the direction of SCWARN and to facilitate coordination of the Mutual Aid and Assistance Program before, during, and after an emergency. The Steering Committee, under the leadership of an elected Chair and Vice Chair, shall meet face-to-face four times per year and also by teleconference on an as-needed basis to address Mutual Aid and Assistance Program issues and to review emergency preparedness and response procedures. During emergency events, conference calls will be held twice daily. SCWARN Steering Committee members must be able to spend time during emergencies helping match needs and available resources. The Steering Committee shall be comprised of one representative from each of the three professional water and wastewater associations within the state of South Carolina (SCRWA, WEASC, and SCAWWA); two at-large members from water or wastewater utilities serving a population of less than 10,000; two at-large members from utilities serving a population of between 10,000 and 50,000; two at-large members from utilities serving a population of greater than 50,000; one ex-officio member representing SCDHEC; and one ex-officio member representing the SCEMD (South Carolina Emergency Management Division). Association representatives and ex-officio members shall serve at the appointment of their respective association or agency. Utility representatives to the Steering Committee shall be elected by simple majority vote of those SCWARN utility members responding to a duly publicized nomination and election process.

ARTICLE IV. PROCEDURES

The State Committee shall develop operational and planning procedures for the Mutual Aid and Assistance Program. These procedures shall be updated at least annually. The Committee shall coordinate as appropriate with other applicable agencies.

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 With copies to the State Committee. 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 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 non-returnable 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 Responding 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. 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 by 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.
MEMBER'S LIABILITY

To the extent permitted by law, and without waiving sovereign immunity, each Member shall be responsible for any and all claims, demand, suits, actions, damages and causes of action related to or arising out of or in any way connected with its own actions, and the actions of its personnel, in providing mutual aid and assistance rendered or performed pursuant to the terms and conditions of this Agreement.

ARTICLE X.
[Reserved. Previous language on Signatory Indemnification deleted in entirety]

ARTICLE XI.
WORKER'S COMPENSATION CLAIMS

The Responding Member is responsible for providing worker's compensation benefits and administering worker's compensation for its employees.

ARTICLE XII.
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 XIII.
INSURANCE

Members of this Agreement shall maintain an insurance policy 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 XIV.
EFFECTIVE DATE

This Agreement shall be effective after the Water and Wastewater Utility's authorized representative executes the Agreement and the State Committee Chair receives the Agreement. The State Committee Chair shall maintain a master list of all members of the Mutual Aid and Assistance Program.

ARTICLE XV.
WITHDRAWAL

A Member may withdraw from this Agreement by providing written notice of its intent to withdraw to the State Chair. Withdrawal takes effect 60 days after the appropriate officials receive notice.

ARTICLE XVI.
MODIFICATION

No provision of this Agreement may be modified, altered, or rescinded by individual parties to the Agreement. Modifications to this Agreement may be necessary due to programmatic operational changes to support the agreement. Notice of proposed modifications, originating from the SCWARN Steering Committee, shall be sent via written and electronic means to the designee of each member organization and shall include the proposed effective date. Votes must be received by written or electronic means within 30 calendar days of the mailing date. Modifications require a simple majority vote of Members responding. The SCWARN Steering Committee Chair must provide written and electronic notice to all Members of approved modifications to this Agreement. Approved modifications take effect on the date identified in the proposed modification unless superseded by an alternate date during the parliamentary process.

ARTICLE XVII.
PRIOR AGREEMENTS

This Agreement supersedes all prior Agreements, with the exception of the SCAMPS agreement, between Members to the extent that such prior Agreements are inconsistent with this Agreement.

ARTICLE XVIII.
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 XIX.
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 South Carolina 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 _____ 20____.

Water/Wastewater Utility: _____

By: _____

By: _____

Title: _____

Title _____

Please Print Name

Please Print Name