

KYWARN WATER / WASTEWATER UTILITY INTRASTATE MUTUAL AID 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.

This Agreement is authorized under Chapters 39A and 39B of the Kentucky Revised Statutes, 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 have established an intrastate program for mutual aid and assistance. Through the mutual aid and assistance program, members may coordinate response activities and share resources during emergencies. This agreement sets forth the procedures and standards for the administration of the KYWARN Intrastate Mutual Aid and Assistance Program.

ARTICLE II. **DEFINITIONS**

- A. **Emergency**—A natural or manmade event that is may require services, personnel, equipment, and facilities of one or more 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 who 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.

ARTICLE III. **ADMINISTRATION**

The Mutual Aid and Assistance Program shall be administered through a statewide committee. 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 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 at least annually.

ARTICLE V. **REQUESTS FOR ASSISTANCE**

Member Responsibilities: 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 participating members. Requests for assistance may 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 shall determine whether or not resources are available to respond to the request for assistance. Following the evaluation, the authorized representative shall inform the requesting member as soon as possible whether or not the member 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 and when the situation dictates, the requesting utility and responding utilities shall operate utilizing the National Incident Management System (NIMS) protocol.

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).

Food and Shelter: Whenever practical, responding member personnel should be prepared to be self - sufficient for up to 72 hours. 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 radios, 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 by the parties, 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, which cannot be resolved by negotiation shall be resolved by using a two-tiered approach. The first tier shall be mediation by a third-party selected jointly by the parties. Should mediation not be successful, the dispute shall be subjected to binding arbitration under the rules of the American Arbitration Association in which the arbitrator shall be jointly selected by the parties. The decision of the arbitrator shall be binding upon the parties and not subject to appeal.

ARTICLE IX. **INDEMNIFICATION**

Each party (as indemnitor) agrees to protect, defend, indemnify and hold the other party (as indemnitee), and its officers, employees and agents, free and harmless from and against any and all losses, penalties, damages, assessments, costs, charges, professional fees and other expenses or liabilities of every kind and arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of actions of every kind in connection with or arising out of indemnitor's negligent acts, errors and/or omissions. Indemnitor further agrees to investigate, handle, respond to, provide defense for and defend any such claims, etc. at indemnitor's sole expense and agrees to bear all other costs and expenses related thereto. To the extent that immunity does not apply, each party shall bear the risk of its own actions, as it does with its day to day operations, and determine for itself what kinds of insurance, and in what amounts, it should carry. Each party understands and agrees that any insurance protection obtained shall in no way limit the responsibility to indemnify, keep and save harmless the other persons to this agreement.

Notwithstanding the foregoing, to the extent that each party does not purchase insurance, it shall not be deemed to have waived its governmental immunity by law.

ARTICLE X. **SIGNATORY INDEMNIFICATION**

In the event of a liability, claim, demand, action, or proceeding of whatever kind or nature arising out of a specified Period of Assistance, the Members who receive and provide assistance shall defend, indemnify and hold harmless those Members whose involvement in the transaction or occurrence that is the subject of such claim, action, demand, or other proceeding is limited to execution of this Agreement.

ARTICLE XI. **WORKER'S COMPENSATION CLAIMS**

Employees of responding utilities shall not be deemed as loaned servants while working under this agreement and each participating utility shall be responsible for providing its own worker's compensation benefits and for administering workers' compensation claims arising out of providing or receiving assistance under this agreement.

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**

Each member shall maintain levels of insurance or other risk funding that it believes are sufficient for its own circumstances, are compliant with applicable laws and regulations and meet the requirements of this agreement

ARTICLE XIV. **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 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 Statewide Committee 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 due to programmatic operational changes to support the agreement. Modifications require a simple majority vote of members within the state. 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 XVII. **PRIOR AGREEMENTS**

This agreement supersedes all prior agreements among 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 shall 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 Commonwealth Of Kentucky 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 / 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