

FOR USE BY PRIVATE WATER UTILITIES.

PUBLIC ENTITIES ARE COVERED BY THE STATEWIDE MUTUAL AID AGREEMENT.

MUTUAL AID AGREEMENT FOR WATER/WASTEWATER PROVIDERS

**ARTICLE I.
PURPOSE**

The Water/Wastewater Mutual Aid Program is hereby established to provide a method whereby water/wastewater utilities sustaining physical damage from natural or man made disasters can obtain emergency assistance, in the form of personnel, equipment, and materials and other associated services necessary, from other water/wastewater utilities. The purpose of this Agreement is to formally document such program.

**ARTICLE II.
PARTIES**

This **Mutual Aid Agreement** (“Agreement”) is entered into by, _____ [name of Utility], that by the signatures on duplicate original copies of this Agreement has consented to the terms of this Agreement. Any utility that has signed this Agreement and submitted a copy to the TXWARN site or representative is a party to this Agreement (collectively, “the Parties”).

**ARTICLE III.
POINT OF CONTACT**

Each Party shall designate a point of contact and provide all other parties with designated representatives who can be contacted 24 hours, 7 days a week. Each party shall send the name and contact information of their designated representative by letter or by registration on the TXWARN website to each of the other parties.

**ARTICLE IV.
DEFINITIONS**

- A. AGREEMENT – The Water/Wastewater Mutual Aid Agreement.
- B. PARTICIPATING UTILITY – Any Water/Wastewater utility that executes this Mutual Aid Agreement.
- C. DAMAGED UTILITY – Any Participating Utility that sustains physical damage to its water/wastewater system due to a natural or manmade disaster and seeks assistance pursuant to this Agreement.
- D. ASSISTING UTILITY – Any Participating Utility that agrees to provide assistance to a Damaged Utility pursuant to this Agreement.
- E. AUTHORIZED REPRESENTATIVE – An employee of a Participating Utility authorized by the authority responsible for operating the utility [NOTE: Could be Board or individual] to request or offer assistance under the terms of this Agreement.
- F. PERIOD OF ASSISTANCE – The period of time beginning with the departure of any personnel of the Assisting Utility from any point for the purpose of traveling to the Damaged Utility in order to provide assistance and ending upon the return of all personnel of the

Assisting Utility, after providing the assistance requested, to their residence or place of work, whichever is first to occur.

- G. NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS)– A presidential directive that provides a consistent nationwide approach that allows federal, state, local and tribal governments as well as private-sector and nongovernmental organizations to work together to manage incidents and disasters of all kinds. All state and local governments must adopt it in 2005 in order to continue to receive federal assistance.
- H. SCHEDULE OF EQUIPMENT RATES – The latest rates published by Federal Emergency Management Agency under the response and recovery directorate applicable to major disasters and emergencies.
- I. WORK OR WORK-RELATED PERIOD – Any period of time in which either the personnel or equipment of the Assisting Utility are being used by the Damaged Utility to provide assistance. Specifically included within such period of time are rest breaks when the personnel of the Assisting Utility will return to active Work within a reasonable time. Also, included is mutually agreed upon rotation of personnel and equipment.

ARTICLE V. **PROCEDURE**

In the event that a particular utility becomes a Damaged Utility, the following procedure shall be followed:

- A. The Damaged Utility may contact the Authorized Representative of one or more of the Participating Utilities and provide them with the following information:
 - 1. a general description of the damage sustained;
 - 2. the part of the water/wastewater system for which assistance is needed;
 - 3. the amount and type of personnel, equipment, materials and supplies needed and a reasonable estimate of the length of time they will be needed;
 - 4. the present weather conditions and the forecast for the next twenty-four hours; and
 - 5. a specific time and place for a representative of the Damaged Utility to meet the personnel and equipment of the Assisting Utility; and
 - 6. The identification of Work conditions and special constraints such as availability of fuel supplies, lodging/meal support, medical facilities, security, communications, etc.
- B. When contacted by a Damaged Utility, the Authorized Representative of a Participating Utility shall assess his utility's situation to determine whether it is capable of providing assistance. No Participating Utility shall be under any obligation to provide assistance to a Damaged Utility. If the Authorized Representative determines that the Assisting Utility is capable of and willing to provide assistance, the Assisting Utility shall so notify the Authorized Representative of the Damaged Utility and providing the following information:
 - 1. a complete description of the personnel, equipment and materials to be furnished to the Damaged Utility;
 - 2. the estimated length of time the personnel, equipment and materials will be available;
 - 3. the work experience and ability of the personnel and the capability of the equipment to be furnished;
 - 4. the name of the person or persons to be designated as supervisory personnel; and
 - 5. the estimated time when the assistance provided will arrive at the location designated by the Authorized Representative of the Damaged Utility.

- C. The personnel and equipment of the Assisting Utility shall remain, at all times, under the direct supervision and control of the designated supervisory personnel of the Assisting Utility. In instances where only equipment is provided by the Assisting Utility, the ownership of said equipment shall remain with the Assisting Utility and said equipment shall be returned to the Assisting Utility immediately upon request. Representatives of the Damaged Utility shall suggest Work assignments and schedules for the personnel of the Assisting Utility; however, the designated supervisory personnel of the Assisting Utility shall have the exclusive responsibility and authority for assigning work and establishing work schedules for the personnel of the Assisting Utility. The designated supervisory personnel shall maintain daily personnel time records and a log of equipment hours, be responsible for the operation and maintenance of the equipment furnished by the Assisting Utility, and report work progress to the Damaged Utility.
- D. The Damaged Utility must provide food and housing for the personnel of the Assisting Utility from the time of departure from their regularly scheduled work location until the time of return to their regularly scheduled work location. The food and shelter provided shall be subject to the approval by the Assisting Utility's supervisory personnel. If not approved, food and shelter must be provided and paid for as determined by mutual Agreement.
- E. The Damaged Utility must provide communications between the personnel of the Assisting Utility and the Damaged Utility.
- F. When providing assistance under this Agreement, the Damaged Utility and Assisting Utility shall be organized and shall function under the National Incident Management System.

ARTICLE VI.
REIMBURSABLE EXPENSES

The terms and conditions governing reimbursement for any assistance provided under this Agreement shall be agreed to prior to the providing of such assistance and shall be in accordance with the following provisions:

- A. **PERSONNEL** – During the Period of Assistance, the Assisting Utility shall continue to pay its employees according to its then prevailing rules and regulations. The Damaged Utility shall reimburse the Assisting Utility for all direct and indirect payroll costs and expenses incurred during the Period of Assistance, including, but not limited to, employee pensions and benefits.
- B. **EQUIPMENT** – The Assisting Utility shall be reimbursed for the use of its equipment during the Period of Assistance according to the **SCHEDULE OF EQUIPMENT RATES** established and published by FEMA. If an Assisting Utility uses an alternate basis of rates for equipment listed on the FEMA Schedule of Equipment Rates, it shall provide such rates to the Damaged Utility prior to providing assistance. Rates for equipment not referenced on the FEMA Schedule of Equipment Rates shall be developed based on actual recovery of costs.
- C. **MATERIALS AND SUPPLIES** – The Assisting Utility shall be reimbursed for all materials and supplies furnished by it and used or damaged during the Period of Assistance, unless such damage is caused by negligence of the Assisting Utility's personnel. The measure of reimbursement shall be the replacement cost of the materials and supplies used or damaged, plus ten percent of such cost. In the alternative, the parties may agree that the Damaged Utility will replace, with a like kind and quality, as determined by the Assisting Utility, the materials and supplies used or damaged.

- D. PAYMENT – Unless mutually agreed otherwise, the Assisting Utility shall bill the requesting utility for all expenses not later than 90 days following the Period of Assistance. The requesting utility shall pay the bill in full not later than 45 days following the billing date. Unpaid bills shall become delinquent upon the forty-fifth 45th day following the billing date, and once delinquent shall accrue interest at the rate of prime plus two percent per annum as reported by the Wall Street Journal or the maximum rate allowed by law, whichever is less.
- E. DISPUTED BILLINGS – Those undisputed portions of a billing shall be paid under this payment plan. Only the disputed portions shall be sent to arbitration under Article VI.

ARTICLE VII. INSURANCE

Each Participating Utility 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.

ARTICLE VIII. IMMUNITY

[This section applies if the Participating Utility is a government entity. If not, the first sentence in this article should be modified.]

Pursuant to §§421.062 and 791.006, Texas Government Code, the party furnishing services under this Agreement, if a governmental entity, is not responsible for any civil liability that arises from the furnishing of those services. No Party waives or relinquishes any immunity or defense on behalf of itself, its officers, employees and agents as a result of the foregoing sentence or its execution of this Agreement and the performance of the covenants contained herein.

ARTICLE IX. TERM

This Agreement shall become effective as to each Party on the date such Party executes the Agreement and shall continue in force and remain binding on each and every Party until December 31st of the year in which the Party executes the Agreement. This Agreement shall renew automatically for a period of one year upon the completion of the initial terms and each subsequent term unless and until such time a Party terminates its participation in this Agreement. Termination of participation in this Agreement by a Party shall not affect the continued operation of this Agreement between and among the remaining Parties.

ARTICLE X. ARBITRATION

All disputes between two or more Participating Utilities arising from participation in this Agreement, which cannot be settled through negotiation, shall be submitted to binding arbitration before a panel of three persons chosen from the members of this Mutual Aid Agreement that are Participating Utilities, excluding those members that are parties to the dispute.

Each party to the dispute shall choose one panel member and those panel members shall agree on one additional panel member.

The panel shall adopt rules of procedure and evidence, shall determine all issues in dispute by majority vote and shall assess damages. The decision of the panel shall be final and binding upon the parties to the dispute.

ARTICLE XI.
TERMINATION

Any Party may at any time by resolution or notice given to all the other Parties decline to participate in the provision of Mutual Aid. The Party shall give written notice of termination of participation in this Agreement and submit a certified copy of such notice to all other Parties. The termination by one or more of the Parties of its participation in this Agreement shall not affect the operation of this Agreement as between the other Parties hereto.

NOW, THEREFORE, in consideration of the covenants and obligations contained herein, the Participating Utility listed here, as a Participating Utility duly executes this Water/Wastewater Mutual Aid Agreement this _____ day of _____, 20____.

Water/Wastewater Utility

By:

Title:

Please Type Name:

Email Address:

Address:

City, State, Zip:

Phone – Office

Phone – After Hours

I represent, warrant and guarantee that: (a) I am authorized to enter into this Agreement; (b) I have had the opportunity to review same with counsel of my own choosing; and (c) as executed and delivered, this Agreement is valid and binding upon the Parties hereto, according to its terms.

Signing this form does not constitute registration as a TXWARN member. Please be sure you have registered as a TXWARN member at www.txwarn.org.

Email this form to: txwarn@texas.net