

# MUTUAL AID AGREEMENT FOR UTAH WATER AND WASTEWATER AGENCIES

THIS COOPERATION AGREEMENT is entered into this day of \_\_\_\_\_, by \_\_\_\_\_ and Utah Water/Wastewater Agency Response Network (UT-WARN) members.

## ARTICLE I. PURPOSE

This Agreement is made and entered into by those water and wastewater agencies who have adopted and signed this Agreement to provide mutual assistance in times of emergency. This water and wastewater mutual aid program is established to provide a method whereby participating water and wastewater utilities which sustain damage from natural or man-made disasters can obtain emergency assistance, in the form of personnel, equipment, materials and other associated services necessary, from other water and wastewater utilities. The Agreement also provides a method whereby responding utilities may be provided with reimbursement for personnel, equipment, materials and other associated services that are made available on an emergency basis. Nothing herein is intended to replace or terminate any pre-existing agreement between any of the Participating Utilities that provide assistance by one Participating Utility's department within the political boundaries of another on a regular or routine basis. Participating Utilities intend by this Agreement to commit to assist each other whenever possible, while allowing each Participating Utility the sole discretion to determine when its personnel and equipment cannot be spared for assisting other Participating Utilities.

In consideration of the mutual covenants and Agreements hereinafter set forth, the parties agree to provide mutual assistance to one another in times of emergency in accordance with the terms and conditions of this Agreement.

## ARTICLE II. DEFINITIONS

- A. AGREEMENT – The Mutual Aid Agreement for Utah Water and Wastewater Agencies. The original Agreement(s) and all signatory pages shall be kept at the Rural Water Association of Utah (RWAU) Office, 76 East Red Pine Drive, Alpine, Utah, 84004-1557.
- B. PARTICIPATING UTILITY or PARTICIPATING UTILITIES – Any water and/or wastewater utility or utilities which execute this Agreement.
- C. REQUESTING UTILITY – Any Participating Utility which sustains physical damage to its water and/or wastewater system due to natural or man-made causes that seeks assistance pursuant to this Agreement.
- D. ASSISTING UTILITY – Any Participating Utility which agrees to provide assistance to a Requesting Utility pursuant to this Agreement.
- E. AUTHORIZED REPRESENTATIVE – An employee of a Participating Utility authorized by that utility's governing board or council to request or offer assistance under the terms of this Agreement.
- F. PERIOD OF ASSISTANCE – The period of time beginning with the mobilization of any personnel of the Assisting Utility from any point for the purpose of traveling to the Requesting Utility in order to provide assistance and ending upon the

- demobilization 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. SCHEDULE OF EQUIPMENT RATES – The latest rates published by the Federal Emergency Management Agency (FEMA) under the response and recovery directorate applicable to major disasters and emergencies or the pre-published schedule provided by a Participating Utility by January 15 of each year.
- H. WORK OR WORK-RELATED PERIOD – Any period of time in which either the personnel or equipment of the Assisting Utility are being used to render assistance to the Requesting Utility. Specifically included within such period of time are breaks when the personnel of the Assisting Utility will return to work within a reasonable period of time. Also, included is mutually agreed upon rotation(s) of personnel and equipment.
- I. EMERGENCY – Any disaster or calamity involving the area of operation of the Participating Utilities, caused by fire, flood, storm, earthquake, civil disturbance, terrorism, or other condition which is or is likely to be beyond the control or ability of the services, personnel, equipment and facilities of a Participating Utility or a “disaster”, “state of emergency” or “local emergency” as those terms are defined by the *Disaster Response and Recovery Act* as set forth in Title 63, Chapter 5a, *Utah Code*, as those sections currently exist or may hereafter be amended.
- J. EXPENSES – All costs incurred by the Assisting Utility during the Period of Assistance to provide personnel, equipment, materials and other associated services when responding to the Requesting Utility as defined in Article XI.
- K. UTAH WATER AND WASTEWATER AGENCY RESPONSE NETWORK (UT-WARN) – The network formed by the Participating Utilities by and through this Agreement and the administration of that network.

### ARTICLE III. APPLICABILITY

This Agreement is available to all water and wastewater agencies, public and private, in the State of Utah upon signing of the Agreement and providing a resource equipment list and a schedule of equipment and manpower rates to UT-WARN.

### ARTICLE IV. ADMINISTRATION

The administration of the Utah Water and Wastewater Agency Response Network (UT-WARN) will be through the UT-WARN Steering Committee (WSC). The WSC shall be made up of one representative from:

- A large water system with a population in excess of 10,000.
- A small water system with a population less than 10,000.
- A large wastewater system with a population in excess of 10,000.
- A small wastewater system with a population less than 10,000.
- The Utah Division of Drinking Water (DDW).
- The Utah Division of Water Quality (DWQ).
- The Utah Division of Homeland Security (UDHS).
- The Inter-Mountain Section of the American Water Works Association (AWWA).
- The Rural Water Association of Utah (RWAU).

- The Water Environment Association of Utah (WEAU).

Representatives to the WSC from the respective agencies shall be named by those agencies. Representatives from large and small systems shall be elected at the UT-WARN Annual Meeting. An individual may represent more than one agency, association or type of system as long as the minimum number of members to the WSC is never less than seven (7).

The WSC shall:

- A. Sponsor an annual meeting for Participating Utilities.
- B. Maintain a data base of information, through one of the WSC participating agencies or associations, of all Participating Utilities.
- C. Meet as a committee to address and resolve concerns, create and modify procedures and any additional policy or legal issues related to UT-WARN.
- D. Maintain a web site to facilitate the flow of resources.
- E. The web site may be pass-word protected for only the use of Participating Utilities if deemed appropriate by the WSC.

#### ARTICLE V. PROCEDURE

In the event that a particular Participating Utility becomes a Requesting Utility, the following procedure shall be followed:

- A. A Participating Utility shall not be held liable for failing to respond or failing to provide assistance.
- B. Each Participating Utility agrees to respond, when practicable, to requests for emergency assistance by providing such resources as are reasonably available to the Assisting Utility. The Assisting Utility shall have the discretion of determining which resources are reasonably available.
- C. The execution of this Agreement shall not create any duty to respond on the part of any Participating Utility.
- D. The Requesting Utility shall contact UT-WARN and provide the necessary information in accordance with the procedures defined in Article IV, Section C.
- E. UT-WARN will assess the needs of the emergency and the available resources using its data bases and will contact Participating Utilities that may be able to provide the requested resources.
- F. When contacted by UT-WARN, the Authorized Representative of a Participating Utility shall assess if it is capable of providing assistance. If the Authorized Representative determines that the Assisting Utility is capable and willing to provide assistance, the Assisting Utility will notify UT-WARN and provide UT-WARN with the information as required in Article IV, Section C.
- G. The personnel and equipment of the Assisting Utility shall remain, at all times, under the direct supervision of the designated supervisory personnel of the Assisting Utility. The Incident Commander or Unified Commander shall provide Work assignments and suggest schedules for the personnel and equipment 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 and equipment 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, see to the safety of Assisting Utility personnel and report work progress to the Requesting Utility and/or the Incident Commander.
- H. When possible, the Requesting Utility shall supply reasonable food and shelter for the Assisting Utility personnel. If the Requesting Utility does not provide food and shelter for responding personnel, the Assisting Utility designated supervisor is authorized to secure the resources reasonably necessary to meet the needs of its personnel. The cost for such resources must not exceed the state per diem rate for that area. Where costs exceed the per diem rate, Assisting Utility must document and demonstrate that the additional costs were reasonable and necessary under the circumstances.
  - I. The Requesting Utility shall provide a communications plan to the Assisting Utility prior to arrival.
  - J. The command structure established during the Emergency shall comply with the requirements of the National Incident Management System (NIMS).
  - K. The Incident Commander or Unified Commander shall, as soon as reasonably possible, release the personnel, equipment and materials of the Assisting Utility from the Emergency. The personnel, equipment and materials of the Assisting Utility should be released before the personnel, equipment, and materials of the Requesting Utility are released.
  - L. To the extent permitted by law, Assisting Utility personnel who hold valid 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.
  - M. Personnel, equipment and materials of the Assisting Utility shall be released from the Emergency when it is determined by the Incident Commander or the Unified Commander that the services provided by the Assisting Utility are no longer required or when the supervisory personnel of the Assisting Utility informs the Incident Commander or the Unified Commander that the personnel, equipment and materials provided by the Assisting Utility are needed to perform duties within the Assisting Utility's water or wastewater system.

#### ARTICLE VI. REIMBURSABLE EXPENSES

The terms and conditions governing reimbursement for any assistance provided under this Agreement shall be determined by standard and prevailing rates of the Participating Utilities. If the Assisting Utility and the Requesting Utility agree to the reimbursement of expenses, reimbursement 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, regulations, policies and procedures. The Requesting 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. All Participating Utilities shall provide a list of

- equipment available and the rates for that equipment upon executing this Agreement. If an Assisting Utility uses an alternate basis of rates for equipment listed on the FEMA *Schedule of Equipment Rates*, the rates of the Assisting Utility shall prevail.
- 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 the negligence of the Assisting Utility’s personnel. The measure of reimbursement shall be the replacement cost of the materials and supplies used or damaged. In the alternative, the parties may agree that the Requesting 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 should bill the Requesting Utility for all expenses no later than ninety (90) days following the release of the Assisting Utility’s personnel and equipment from the Period of Assistance. The Requesting Utility shall pay the bill in full no later than forty-five (45) days following the billing date. Unpaid bills shall become delinquent upon the forty-sixth (46<sup>th</sup>) day following the billing date. The Assisting Utility may request additional periods of time within which to submit the itemized bill, and Requesting Utility shall not unreasonably withhold consent to such request. The Requesting Utility must pay the bill in full on or before the forty-fifth (45<sup>th</sup>) day following the billing date. The Requesting Utility may request additional periods of time within which to pay the itemized bill, and Assisting Utility shall not unreasonably withhold consent to such request, provided, however, that all payment shall occur not later than one year after the date a final itemized bill is submitted to the Requesting Utility.
- E. Each Assisting Utility and their duly authorized representatives shall have access to a Requesting Utility’s book, documents, notes, reports, papers and records which are directly pertinent to this Agreement for the purposes of reviewing the accuracy of a cost bill or making a financial, maintenance or regulatory audit. Each Requesting Utility and their duly authorized representatives shall have access to the Assisting Utility’s books, documents, notes, reports, papers and records which are directly pertinent to this Agreement for the purposes of reviewing the accuracy of a cost bill or making a financial, maintenance or regulatory audit. Such records shall be maintained for at least three (3) years or longer where required by law.
- F. DISPUTED BILLINGS – Those undisputed portions of a billing should be paid under this payment plan.
- G. Disputed portions of the billing should be worked out in accordance to established procedures stated in Article IV.

#### 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. Nothing herein shall act or be construed as a waiver of any sovereign immunity or other exemption or limitation on liability that a Participating Utility may enjoy.

#### ARTICLE VIII. NO SEPARATE ENTITY OR ACQUISITION OF PROPERTY

This Agreement is an interlocal cooperative Agreement under Section 11-13-202, *Utah Code*, as between the public agencies executing this Agreement and is a standard Agreement as between the private entities and the public agencies executing this Agreement. This Agreement does not create any separate legal entity.

No real or personal property shall be acquired jointly by the Participating Utilities to perform the conditions of this Agreement unless such acquisition is specifically agreed to in writing by all Participating Utilities.

#### ARTICLE IX. LAWFUL RESPONSIBILITY

This Agreement shall not relieve any Participating Utility of any obligation or responsibility imposed upon it by law or other Agreement.

#### ARTICLE X. INDEMNIFICATION AND HOLD HARMLESS

- A. Consistent with Title 53, Chapter 2, Section 202 (6) *Utah Code Ann.*, the Requesting Utility agrees to indemnify and save harmless the Assisting Utility and the officers, employees and representatives of the Assisting Utility, if they are acting within the course and scope of their duties, from all claims, suits actions, damages and costs of every kind, including but not limited to reasonable attorney's fees and court costs arising or resulting from the performance or provision of services and materials by the Assisting Utility under this Agreement unless there is a determination that such claims are the result of negligence of the Assisting Utility or the officers, employees or representatives of the Assisting Utility.
- B. The Assisting Utility shall hold harmless and indemnify the Requesting Utility and the officers, employees and representatives of the Requesting Utility against any liability for any and all claims arising from any damages or injuries caused by negligence of the Assisting Utility or the officers, employees or representatives of the Assisting Utility except to the extent of the negligence of the Requesting Utility or the officers, employees or representatives of the Requesting Utility.
- C. Subject to the foregoing, nothing in this Agreement shall be construed as an Agreement by a Participating Utility to indemnify or hold harmless, or in any way assume liability if there is a determination that any personal injury, death or property loss or damage caused by the negligence of any other Participating Utility or person.
- D. Nothing herein shall be construed to waive any of the privileges and immunities associated with utility services or other related services, including emergency services, or of any other nature of any of the Participating Utilities. No party waives any defenses or immunity available under the Utah Governmental Immunity Act (Chapter 63, Section 30d, *Utah Code Ann.*), nor does any party waive any limits of liability currently provided by the Act.
- E. Each Participating Utility shall be solely responsible for providing workers compensation and benefits for its own personnel who provide assistance under this Agreement unless the parties otherwise agree. Each Participating Utility shall provide insurance or shall self insure to cover the negligent acts and omissions of its own personnel rendering services under this Agreement.

#### ARTICLE XI. TERM

This Agreement shall have an initial term of fifty (50) years commencing upon the effective date of the Agreement.

#### ARTICLE XII. TERMINATION

Any Participating Utility may terminate its obligation under and participation in this Agreement, with or without cause, by giving all other Participating Utilities thirty (30) days prior written notice of the intent to terminate. The termination of this Agreement by any individual Participating Utility shall not affect the validity of the Agreement as to the remaining Participating Utilities. Withdrawal from this agreement shall in no way affect a Requesting Utility's duty to reimburse the Assisting Utility for costs incurred during a Period of Assistance, which duty shall survive such withdrawal.

#### ARTICLE XIII. WHOLE AGREEMENT, AMENDMENTS

This Agreement constitutes the whole Agreement of the parties, written or oral, between the parties. This Agreement may be amended in whole or in part at any time by the Participating Utilities by submitting a written amendment to the WSC. If a majority of the WSC agrees with the amendment, the amendment shall be submitted to the UT-WARN membership. A vote by the membership will be held by mail following procedures outlined in Article IV of this Agreement. Members who fail to vote will have their vote counted as an affirmative vote.

#### ARTICLE XIV. SEVERABILITY

If any provisions of this Agreement are held to be invalid or unenforceable by a court of proper jurisdiction, the remaining provisions shall remain in full force and effect.

#### ARTICLE XV. NO THIRD PARTY BENEFICIARIES

This Agreement is not intended to benefit any party or person not named as a Participating Utility specifically herein, or which does not become a signatory hereto as provided herein.

#### ARTICLE XVI. EFFECTIVE DATE

This Agreement shall be effective as to the Participating Utility executing this Agreement upon the date of execution of this Agreement by the Participating Utility, submittal of a resource equipment list and a schedule of equipment and manpower rates.

#### ARTICLE XVII. AUTHORIZATION

The individuals signing this Agreement on behalf of the Participating Utility confirm that they are a duly Authorized Representative of the Participating Utility and are lawfully enabled to sign this Agreement on behalf of the Participating Utility.

**ARTICLE XVIII. REVIEW BY AUTHORIZED ATTORNEY**

In accordance with Section 11-13-202.5(3) *Utah Code* this Agreement shall be submitted to the attorney authorized to represent each Participating Utility for review as to proper form and compliance with applicable law before this Agreement may take effect.

**ARTICLE XIX. RESOLUTIONS OF APPROVAL NOT REQUIRED**

This Agreement may be approved and executed as an executive function in accordance with the provisions of the *Interlocal Cooperation Act* as set forth in Section 11-13-202.5(1)(a), *Utah Code*, and the adoption of a resolution of approval is not required.

**ARTICLE XX. COUNTERPARTS**

This Agreement and any amendments to it may be executed in counterparts, each of which shall be deemed an original.

**ARTICLE XXI. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the applicable laws of the United States and the State of Utah.

**ARTICLE XXII. FILING OF AGREEMENT**

An executed counterpart of this Agreement shall be filed with the keeper of records of each Participating Utility. An executed counterpart of this Agreement shall also be filed at the offices of RWAU.

In witness whereof, each Participating Utility hereto has executed this Agreement on the respective signature page of that Participating Utility as of the date specified by its signature block.

**ARTICLE XXIII. PERSONNEL NOT AGENTS**

The employees of the Participating Utilities providing services pursuant to or consistent with the terms of this Agreement are solely the officers, agents, or employees of the entity that hired them. Each Participating Utility shall assume any and all liability for the payment of salaries, wages, or other compensation due or claimed due, including workers' compensation claims, and each public entity shall hold the other harmless therefrom. The Participating Utilities shall not be liable for compensation or indemnity to any other Participating Utility's employee for any injury or sickness arising out of his or her employment, and the Participating Utilities shall not be liable for compensation or indemnity to any Participating Utility employee for injury or sickness arising out of his or her employment, and each party hereby agrees to hold the other party harmless against any such claim.

**ARTICLE XXIV. ADDITIONAL UTILITIES**

Any subdivision of the State of Utah not specifically named herein ("Prospective Utility") which shall hereafter sign this Agreement or a copy hereof shall become a Participating Utility hereto provided that it first give 30 days written notice to each Participating Utility hereto of its intent to become a Participating Utility, and provided

that a majority of the Participating Utility shall not within 30 days thereafter notify the WSC in writing that they object to the Prospective Utility becoming a party hereto. In the event that a majority of the Agencies objects to the Prospective Utility becoming a party hereto, then the WSC shall promptly notify the Prospective Utility that its application was rejected. A Prospective Utility thus rejected may reapply for membership hereunder after one year has passed. Any Participating Utility which becomes a newly accepted Participating Utility to this Agreement is entitled to all the rights and privileges and subject to the obligations of any Participating Utility as set out herein.

NOW, THEREFORE, in consideration of the covenants and obligations contained herein, the participating utility listed here, as a Participating Utility duly executes this Mutual Aid Agreement for Utah Water and Wastewater Agencies this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

Water and/or Wastewater Utility \_\_\_\_\_

By: \_\_\_\_\_ By: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

Approved as to form and legality

By: \_\_\_\_\_  
Utility's Attorney