

**AGREEMENT FOR MUTUAL AID AND ASSISTANCE
OF THE NORTH DAKOTA WATER AND
WASTEWATER AGENCY RESPONSE NETWORK**

This Agreement is made and entered into by public and private Water and Wastewater Utilities that see to participate in an Intrastate Program for Mutual Aid and Assistance.

This Agreement is made pursuant to Chapter 54.4 of the North Dakota Century Code authorizing the entering into joint powers agreements and the provisions of North Dakota Century Code Chapter 37.17.1 relating to emergency services.

**ARTICLE I.
PURPOSE**

Recognizing that disasters and/or emergencies may require aid or assistance in the form of personnel, equipment, and supplies from outside the area of impact, the signatory utilities hereby establish an Intrastate Program for Mutual Aid and Assistance. Through the North Dakota Water and Wastewater Agency Response Network 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. *Authorized Official*: An employee or officer of a Member that is authorized to:
1. Request assistance
 2. Offer assistance
 3. Refuse to offer assistance or
 4. Withdraw assistance under this agreement
- B. *Emergency*: A natural or human caused event or circumstance causing, or imminently threatening to cause, loss of life, injury to person or property, human suffering or financial loss, and includes, but not limited to, fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills or releases of oil or hazardous material, contamination, utility or transportation emergencies, disease, blight, infestation, civil disturbance, riot, intentional acts, sabotage and war that is, or could reasonably be beyond the capability of the services, personnel, equipment, and facilities of a Mutual Aid and Assistance Program Member to fully manage and mitigate internally.

- C. *Members*: Any public or private Water or Wastewater Utility that manifests intent to participate in the Mutual Aid and Assistance Program by executing this Agreement.
1. *Associate Member*: Any non member participant, approved by the Statewide Committee, that provides a support role for the WARN program, for example State Department of Health, or associations, who are members of the Regional or State Steering Committees and do not officially sign the WARN agreement.
 2. *Requesting Member*: A member who requests aid or assistance under the Mutual Aid and Assistance Program.
 3. *Responding Member*: A member that responds to a request for aid or assistance under the Mutual Aid and Assistance Program
 4. *Non-Responding Member*: A member or Associate Member that does not provide aid or assistance during a Period of Assistance under the Mutual Aid and Assistance Program.
- E. *Public Records*: Any documents or records that may be created, shared or disseminated pursuant to this agreement shall be held in accordance with Chapter 44-04 of the North Dakota Century Code relating to public documents.
- 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 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.

STATEWIDE COMMITTEE MEMBERSHIP, OFFICERS AND MEETINGS

- A. Statewide Committee shall be established to organize and maintain the Mutual Aid and Assistance Program. The Statewide Committee shall consist of representatives of two rural water systems, representatives of two municipalities, a representative from one tribal utility, and a representative of one private utility. Each representative shall be appointed by Members of their respective group. In the event of a vacancy on the Statewide Committee, a representative-at-large would be elected by the membership. Each Member shall have one vote. In addition to representing the interests of the Members, the

Statewide Committee shall include representatives from North Dakota Department of Emergency Services, North Dakota Rural Water Association, North Dakota Department of Health, North Dakota Water Environment Association, North Dakota Chapter of the American Public Work Association and the North Dakota Water Commission. Representatives of these organizations shall not have voting authority.

- B. The Statewide Committee will elect the following officers from among its voting members: a Chair, a Vice Chair, and a Secretary. The term of all board members shall be 2 years, except that in the first year the Agreement is in effect, one rural water representative and one municipal representative shall be elected for one year terms. A quorum shall be a majority of the members of the voting membership.
- C. The Statewide Committee shall meet at least twice each year, at a meeting place designated by the Committee. This Statewide Committee may make, establish and alter rules and regulations for its procedure consistent with generally recognized principals of parliamentary procedure. The Statewide Committee shall have the power to carry out purposes of this Agreement, including but not limited to the power to: adapt bylaws; develop specific procedures and protocol for requesting assistance; develop specific procedures and protocol for responding to a request for assistance; organize meetings; operate a web site; disseminate information; create information brochures; create subcommittees; maintain membership lists; maintain equipment and supply inventory lists; and deal, with membership issues.

ARTICLE IV. PROCEDURES

In coordination with the North Dakota Department of Emergency Services, North Dakota Rural Water Association, North Dakota Department of Health, North Dakota Water Environment Association, North Dakota Chapter of the American Public Works Association and the North Dakota Water Commission, 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. REQUEST FOR ASSISTANCE

- A. *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 Member for mutual aid and assistance response. Such contact information shall be updated and provided to the Statewide Committee annually or when changes occur. 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.

- B. *Response to a Request for Assistance:* Members of the agreement are not obligated to respond to a request. After a Member receives a request for assistance, the Authorized Official evaluates whether or not to respond, whether resources are available to respond, or if other circumstances exist that precludes or hinders a response to the request for assistance. Following the evaluation, the Authorized Representative shall inform, as soon as possible, the requesting Member of their availability to respond.
- C. *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 whether or not to respond, or the availability of resources to be used in such response. An Authorized Member's decisions on the availability of resources shall be entirely discretionary and final.

ARTICLE VI.

RESPONDING MEMBER PERSONNEL

- A. *National Incident Management System:* When providing assistance under this Agreement, the Requesting Member and Responding Member shall be organized and shall function under the National Incident Management System.
- B. *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 designated supervisor(s) of the Responding Member(s). Whenever practical, Responding Member personnel must be self sufficient for up to 72 hours.
- C. *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 it's personnel. To the extent feasible, cost for such resources should comply with 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.
- D. *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 Member personnel.

- E. *Status*: Unless otherwise provided by law, Responding Member's officers and employees retain the same privileges, immunities, rights, duties and benefits as provided in their respective jurisdictions.
- F. *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 specific Period of Assistance.
- G. *Right to Withdraw*: The Responding Member's Authorized Official retains the right to withdraw some or all of its resources at any time for any reason in the Responding Member's sole and absolute discretion. Notice of intent to withdraw must be communicated to the Requesting Member's Authorized Official as soon as possible.

ARTICLE VII.
COST REIMBURSEMENT

- A. Unless otherwise mutually agreed, 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:
 - 1. *Personnel*: Responding Member personnel are to be paid for work completed during a specified Period of Assistance according to 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. A responding member may, at its sole discretion, waive, in whole or in part, any request for reimbursement.
 - 2. *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 no 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.

3. *Records:* Each Responding Member and their duly authorized representatives shall have access to a Requesting Member'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. Each Requesting Member and their duly authorized representatives shall have access to a Responding Member'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.

4. *Equipment:* The Requesting Member shall reimburse the Responding Member for the use of equipment during the specified Period of Assistance, including, but not limited to, reasonable rental rates, all fuel, lubrication, maintenance, transportation, and loading/unloading of loaned equipment. All equipment shall be returned to the Responding Member in good working order as soon as practicable and reasonable under the circumstances. As a minimum, rates for equipment used 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 the equipment. 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 costs. If the responding Member must lease a piece of equipment while its loaned equipment is being repaired, the Requesting Member shall reimburse Responding Member for such rental costs. A responding member may, at its sole discretion, waive, in whole or in part, any request for reimbursement.

5. *Materials and Supplies:* The Requesting Member shall reimburse the Responding Member in kind or actual replacement costs, 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 clean, damage-free condition. Reusable supplies that are returned to the Responding Member with damage shall be treated as expendable supplies for the purposes of cost reimbursement. A responding member may, at its sole discretion, waive, in whole or in part, any request for reimbursement.

ARTICLE VIII.
DISPUTES

The Members desire to resolve disputes rising under this Agreement in an efficient and timely manner. Accordingly, if a dispute arises, the disputing parties agree to attempt in good faith to resolve the dispute among themselves. To this end, each party shall appoint one representative to negotiate informally and in good faith, to resolve any dispute arising under this Agreement. The representatives appointed by each disputing party shall determine the location, formula, frequency and duration of the negotiations. If the representatives cannot resolve the dispute within thirty (30) calendar days after the first negotiation meeting, the disputing parties may submit the dispute to arbitration upon concurrence of both parties or, alternatively, either party may file suit in the North Dakota state district court. All disputed issues shall be determined in accordance with the laws of the state of North Dakota.

ARTICLE IX.
INDEMNIFICATION

- A. The Requesting Member shall assume the defense of, fully indemnify and hold harmless, the Responding Member, its officers and employees, from all claims, loss, damage, injury, and liability of every kind, nature, and description, directly or indirectly arising from Responding Member's work provided in response to a Request for assistance.
- B. 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 have a duty to defend, indemnify, save and hold harmless all Responding and Non-Responding Members, their officers, agents and employees from any liability, claim, demand, action, or proceeding of whatever kind or nature arising out of a Request for Assistance or the Provision of Assistance.
- C. Nothing in this agreement shall be interpreted as a waiver of any exemptions, limitations, protections, defenses and/or immunities provided by law.

ARTICLE X.
NOTICE

A member who becomes aware of a claim or suit that is 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. However, if a Member participates in their own defense, it shall not be a waiver of the indemnification provisions of this agreement.

**ARTICLE XI.
INSURANCE**

The parties hereto shall secure and keep enforced during the term of this agreement insurance or equivalent coverage from insurance companies, governmental self-insurance pools or government self-retention funds, authorized to do business in North Dakota, in at least the following amounts:

1. Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable) with minimum liability limits of \$250,000.00 per person and \$500,000.00 per occurrence.
2. Worker's compensation coverage meeting all statutory requirements.

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

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

**ARTICLE XIII.
EFFECTIVE DATE**

This Agreement shall be effective after the execution of the agreement by each participating Member and the Statewide Committee Chair receives a copy of the executed Agreement.

**ARTICLE XIV.
WITHDRAWAL**

A Member may withdraw from this Agreement by providing written notice of its intent to withdraw to the Statewide Chair at 918 E. Divide Ave, 3rd Floor, Bismarck ND, 58501-1947. Such withdrawal shall be effective upon the thirtieth (30th) day after the date of First Class mailing of the Notice of Withdrawal. Withdrawal from this Agreement shall in no way affect a Requesting Member's duty to reimburse a Responding Member for cost incurred during a Period of Assistance, which duty shall survive such withdrawal.

**ARTICLE XV.
MODIFICATION**

No provision of this Agreement may be modified, altered, or rescinded except upon written agreement by all members.

ARTICLE XVI.
SEVERABILITY

The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be constructed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

ARTICLE XVII.
PRIOR AGREEMENTS

This Agreement supersedes all prior Agreements 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 shall have any rights under this Agreement as a third-party beneficiary. Assignments of benefits and delegation of duties created by this Agreement are prohibited and shall be without effect.

Member Name: _____

By: _____

Its: _____

Please Print Name

Date: _____

Member Name: _____

By: _____

Its: _____

Please Print Name

Date: _____