Tab 8

North Carolina Water and Wastewater Agency Response Network

Mutual Aid and Assistance Agreement For Water and Wastewater Utilities

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This Agreement is made and entered into by public and private Water and Wastewater Utilities in North Carolina that have, by executing this Agreement, manifested their intent to participate in an Intrastate Program for Mutual Aid and Assistance.

This Agreement is authorized under Section 160A-318 of the North Carolina General Statutes which provides that public and private Water and Wastewater Utilities may contract with each other to provide mutual aid and assistance in restoring water and sewer in the event of natural disasters or other emergencies.

ARTICLE I.
PURPOSE

Recognizing that emergencies may require assistance in the form of personnel, equipment, materials, 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 whether localized to the utilities or a declared disaster. 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 by the Member's governing board or management to:

- request assistance;
- offer assistance;
- Refuse to offer assistance or;
- Withdraw assistance under this Agreement.

B. Disaster – An emergency event that reaches a specific financial threshold related to magnitude of loss and property damage.

C. Confidential Information – Information defined NCGS 132-1.2 as confidential information or NCGS 132-1.7 as sensitive public security information.

D. Emergency— An unanticipated and/or sudden natural or manmade event that requires immediate action and is, or is likely to be, beyond the control of the services, personnel, equipment, and facilities of a Mutual Aid and Assistance Program Member.

E. Incident Command System (ICS) – A standardized on-scene emergency management system designed for use for all kinds of emergencies and is applicable to small as well as large and complex incidents. ICS is the combination of facilities, equipment, personnel procedures, and communications operating within a common organization structure, designed to aid in the management of resources during incidents.

F. Indemnity – Security against hurt, loss, or damage. An exemption from incurred penalties or liabilities.[1]

G. Indemnitee – A party to this Agreement that is entitled to be indemnified by another party to this Agreement pursuant to the terms of Article X.

H. Indemnitor – A party to this Agreement that is obligated to indemnify another party to this Agreement pursuant to the terms of Article X.

I. Large water and or wastewater utility— A utility that is represented with a population in excess of 10,000.

J. 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.

K. Mutual Aid and Assistance Agreement – A formal agreement among emergency responders to lend assistance across jurisdictional boundaries when required; either by an emergency that exceeds local resources or a disaster

L. National Incident Management System (NIMS) — A national, standardized approach to incident management and response that sets uniform processes and procedures for emergency response operations.

M. The North Carolina Water and Wastewater Agency Response Network (NCWaterWARN) - A network of public and private water and wastewater utilities united under an agreement to provide and receive mutual aid and assistance to signatories to the agreement during emergencies ranging from those that may arise from declared disasters or are specific to a single utility.

N. Period of Assistance — A specified period of time when a Provider assists a Recipient. The period commences when personnel, equipment, materials, or supplies depart from a Provider'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.

O. Provider — A Member that responds to a request for assistance under the Mutual Aid and Assistance Program.

P. Recipient — A Member who requests assistance under the Mutual Aid and Assistance Program.

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[1] *Merriam-Webster*. Retrieved August 22, 2007, from Merriam -Webster.com website: http://www.merriam-webster.com/

Q. Small water and or wastewater Utility— A utility is represented with a population less than 10,000.

R. Private Water Utility— An entity that is not a unit of government that owns or operates a water and/or wastewater utility, whether on a for-profit or not-for-profit basis.

S. Public Utility— A unit of government that owns or operates a water and/ or wastewater utility.

ARTICLE III.
ADMINISTRATION

The Mutual Aid and Assistance Program shall be administered through the North Carolina Water and Wastewater Agency Response Network (NCWaterWARN) Committee in coordination with the North Carolina Rural Water Assoication (NCRWA). The purpose of the NCWaterWARN Committee is to provide coordination of the Mutual Aid and Assistance Program before, during, and after an emergency. The NCWaterWARN Committee, under the leadership of an elected Chairperson, shall meet quarterly as deemed necessary by the Chair to address Mutual Aid and Assistance Program issues.

The administration of NCWaterWARN will be through the NCWaterWARN Committee. The committee shall consist of a chair and vice chair, an eastern regional section, a western regional section, and (3) At-Large members. The NCWaterWARN Committee shall consist of an eastern regional section with three (3) seats representing large and small public water and wastewater utilities and private water systems. The western regional section shall consist of three (3) seats representing large and small public water and wastewater utilities and private water systems. Also, there shall be three (3) At-Large seats for additional representatives from either large and small public water and wastewater utilities or private water systems.

NCWaterWARN regional sections are divided along the NC Department of Environmental Quality (NCDEQ) regional office areas. A map of the regional sections is included in Appendix A of this agreement.

Representatives from large and small public water and wastewater utilities and private utilities shall be elected at the NCWaterWARN Annual Meeting. Election and voting procedures will be described in the NCWaterWARN Ops Plan.

Under the leadership of the NCWaterWARN Committee Chair, NCWaterWARN Committee Members shall plan and coordinate emergency preparedness and response activities for the Mutual Aid and Assistance Program. The NCWaterWARN Committee Chair (or his/her designee) shall maintain a master list of all members of the Mutual Aid and Assistance Program.

The NCWaterWARN Committee shall elect a Chair and a Vice Chair. The first Chair and Vice Chair will serve a two (2) year term and subsequent Chairs and Vice Chairs will serve one (1) year thereafter.

The NCWaterWARN Committee shall:

A. Convene an annual meeting for members.
B. Provide for the development and maintenance of a database of all participating utilities through one of the members, sponsor agencies, or participating agencies or associations.

C. Meet as a NCWaterWARN Committee at least quarterly, as needed and at the discretion of the Chair, to address and resolve concerns, create and modify procedures and any additional policy or legal issues related to NCWaterWARN.
D. Provide for the development and maintenance of a secure website.
E. Include an advisory board in its meetings to provide input based on the expertise of their agency.

The additional responsibilities of the Chair are described throughout the agreement. Those duties will be highlighted in the agreement for review by the NCWaterWARN Committee and the Sponsors. Those duties will be listed together in the protocols.

The NCWaterWARN shall have an advisory board that consists of representatives from partner agencies and stakeholders. Representatives to the advisory board from the respective agencies shall be named by those agencies. The advisory board is not a voting member. NCWaterWARN Advisory Board may include at least one representative from the following agencies:

- North Carolina Department of Environmental Quality; Division of Water Resources; Public Water Supply Section
- North Carolina Department of Environmental Quality; Division of Water Resources; Water Quality Regional Operations Section
- North Carolina Section of the American Water Works Association and Water Environment Association
- North Carolina Rural Water Association
- North Carolina Waterworks Operators Association
- North Carolina Emergency Management
- North Carolina League of Municipalities
- Eastern Water and Wastewater Network
- Environmental Protection Agency Region IV
- Department of Homeland Security Protective Security Advisor

Other agencies may be invited to join or have representation on the advisory board at the discretion of the NCWaterWARN Committee.

ARTICLE IV.
PROCEDURES

In coordination with other response partner agencies, *the* NCWaterWARN Committee shall develop operational and planning procedures for the Mutual Aid and Assistance Program. These procedures shall be reviewed at least annually and updated as necessary.

ARTICLE V.
PRE-EVENT PLANNING

Members shall identify resources available for deployment and develop plans for housing and providing for the necessities and maintenance of personnel and equipment deployed to provide mutual aid and assistance when a request for assistance is made by the member.

In addition, Members shall provide training to their response personnel related to:

- NIMS compliance
- Mutual aid response protocols
- Required documentation for providing mutual aid and assistance and for receiving mutual aid and assistance

ARTICLE VI.
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, materials, 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. The Chair will be notified of all activations of the agreement. Specific protocols for requesting aid shall be provided in the required procedures (Article IV).

Prospective NCWaterWARN members must, if not already active, become and maintain an active membership with the North Carolina Rural Water Association (NCRWA) and must attach proof of its membership with NCRWA to this agreement. NCWaterWARN Members must also provide written notice to the acting NCWaterWARN Chairman of its termination of membership with NCRWA which also results in termination with its membership and benefits associated with NCWaterWARN.NCWaterWARN members are responsible for completing their system's profile information, once an account is assigned, in their member account on the current NCWaterWARN platform. Failure to comply may result in both an innacurate member directory and omission from automated NCWaterWARN communications to the membership.

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 Recipient whether it has the resources to respond. If the Member is willing and able to provide assistance, the Member shall inform the Recipient about the type of available resources and the approximate arrival time of such assistance.

Discretion of Provider'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 willingness to respond and/or availability of resources. An Authorized Member's decisions on the availability of resources shall be final.

ARTICLE VII. PROVIDER PERSONNEL

National Incident Management System: When providing assistance under this Agreement, the Recipient and Provider shall be organized and shall function under the National Incident Management System if State or Federal preparedness funding is desired. *Control:* Provider personnel shall remain under the direction and control of the Provider. The Recipient's Authorized Official shall coordinate response activities with the designated supervisor(s) of the Provider(s). Whenever practical, Provider personnel must be self-sufficient for up to 72 hours.

Food and Shelter: The Recipient shall supply reasonable food and shelter for Provider personnel. If the Recipient is unable to or fails to provide food and shelter for Responding personnel, the Provider's designated supervisor is authorized to secure the resources necessary to meet the needs of its personnel. The cost for such resources should not exceed the State per diem rates for that area without further justification of good faith efforts to secure accommodations within the per diem. The Recipient remains responsible for reimbursing the Provider for all costs associated with providing food and shelter, if such resources are not provided.

Communication: The Recipient shall provide Provider 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 Provider'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, Provider 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. Members should comply with NIMS credentialing where applicable.

Right to Withdraw: The Provider'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 Recipient's Authorized Official as soon as possible.

ARTICLE VIII. COST REIMBURSEMENT

Unless otherwise mutually agreed in whole or in part, the Recipient shall reimburse the Provider for each of the following categories of costs incurred while providing aid and assistance during the specified Period of Assistance. Such cost may include damage or loss to equipment.

Personnel: Provider personnel are to be paid for assigned duty during a specified Period of Assistance (refer to definition of period of assistance in Article II) according to the terms provided in their employment contracts or other conditions of employment. Either Member may require Provider's personnel to observe a rest period prior to travel back to the Provider's base of operations to ensure safety of personnel. The Provider designated supervisor(s) must keep accurate records of work performed by personnel during the specified Period of Assistance. Recipient reimbursement to the Provider must consider all personnel costs, including salaries or hourly wages, costs for fringe benefits, and indirect costs.

Equipment: The Recipient shall reimburse the Provider for the use of equipment during a 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 Provider in similar condition to its condition at the time of the request for mutual aid and 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 Provider uses rates different from those in the FEMA Schedule of Equipment Rates, the Provider must provide such rates in writing to the Recipient prior to supplying resources. Mutual agreement on rates other than FEMA Schedule of Equipment Rates 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. If Provider must lease a piece of equipment while its equipment is being repaired, Recipient shall reimburse Provider for such rental costs.

Materials and Supplies: The Recipient must reimburse the Provider in kind or at actual replacement cost, plus handling charges, for use of expendable or non-returnable supplies. The Provider must not charge direct fees or rental charges to the Recipient for other supplies and reusable items that are returned to the Provider in a clean, damage-free condition. Reusable supplies that are returned to the Provider with damage must be treated as expendable supplies for purposes of cost reimbursement.

Payment Period: The Provider must provide an itemized bill to the Recipient for all expenses it incurred as a result of providing assistance under this Agreement. The Provider must send the itemized bill to the authorized official not later than ninety (90) days following the end of the Period of Assistance. The Recipient must pay the bill in full on or before the one hundred eightieth (180th) day following the billing date. Unpaid bills become delinquent upon the one hundred eighty-first (181st) 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.

Records – Each Provider and their duly authorized representatives shall have access to a Recipient'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 Recipient and their duly authorized representatives shall have access to a Provider'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 and made accessible for at least three (3) years or longer where required by law.

ARTICLE IX.
DISPUTES

Any claim arising out of or relating to this agreement shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by any Member. The parties shall share the mediator's fee and any filing fees equally. Mediation shall be held in the County of the Providing Member if a place has not been mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court of competent jurisdiction. Claims not resolved by mediation shall be decided by a court of competent jurisdiction unless the parties mutually agree otherwise.

ARTICLE X.
LIABILITY

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 XI.
INDEMNIFICATION

To the extent permitted by applicable law, in the event of a liability, claim, demand, action, or proceeding of whatever kind or nature arises out of a specified Period of Assistance, the Members who receive and provide assistance during said Period of Assistance shall indemnify and hold harmless those other Members, NCWaterWARN Committee and Sponsor Agencies which had no involvement with the transaction or occurrence that is the subject of the aforementioned claim, action, demand, or other proceeding of whatever kind or nature is limited to execution of this Agreement.

ARTICLE XII.
WORKERS' COMPENSATION CLAIMS

Recipient shall not be responsible for reimbursing any amounts paid or due as benefits to Provider's employees under the terms of the North Carolina Workers' Compensation Act, Chapter 97 of the General Statues, due to personal injury or death occurring during the period of time such employees are engaged in the rendering of aid and assistance under this Agreement. It is mutually understood that Recipient and Provider shall be responsible for payment of such workers' compensation benefits only to their own respective employees. Further, it is mutually understood that Provider will be entirely responsible for the payment of workers' compensation benefits to its own respective employees pursuant to G.S. 97-51.

ARTICLE XIII.
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 XIV.
CONFIDENTIAL INFORMATION

Pursuant to NCGS 132-1.7, and to the extent permitted by applicable law, any Member shall maintain in the strictest confidence and shall take all reasonable steps necessary to prevent the disclosure of any confidential information shared between Members under this Agreement. If any Member, third party, or other entity requests or demands, by subpoena or otherwise, that a Member disclose any confidential information disclosed under this Agreement, the Member shall immediately notify the owner of the confidential information and shall take all reasonable steps necessary to prevent the disclosure of any confidential information.

ARTICLE XV.
EFFECTIVE DATE

This Agreement shall be effective after both the Water and/or Wastewater Utility's authorized representative executes the Agreement and presents proof of dual membership with North Carolina Rural Water Association (NCRWA). An executed copy will be provided to the NCWaterWARN Committee Chair as soon as possible.

ARTICLE XVI.
WITHDRAWAL

A Member may withdraw from this Agreement by providing written notice of its intent to withdraw to NCWaterWARN Committee Chair. Withdrawal takes effect sixty (60 days after the NCWaterWARN Committee Chair receives notice.

Membership may be suspended or revoked by the NCWaterWARN Committee for failure to comply with the Articles of this Agreement.

ARTICLE XVII.
MODIFICATION

Modifications to this Agreement may be made to incorporate programmatic operational changes to support the Agreement. Modifications require a two-thirds majority vote of Members. The NCWaterWARN Committee Chair must provide written notice to all Members of proposed modifications to this Agreement sixty (60) days in advance of the vote. The NCWaterWARN Committee Chair must provide written notice to all members of approved modifications to this Agreement. Approved modifications take effect sixty (60) days after the date upon which notice of the approved modifications are sent to the Members.

No provision of this Agreement may be modified, altered, or rescinded by individual parties to the Agreement.

ARTICLE XVIII.
SEVERABILITY

The Members 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 construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

ARTICLE XIX PRIOR AGREEMENTS

This Agreement supersedes all prior Agreements between Members to the extent that such prior Agreements are inconsistent with this Agreement.

ARTICLE XX. MULTIPLE AGREEMENTS

When multiple mutual aid and assistance agreements exist between two Members, if inconsistencies exist between the agreements, the conditions of this Agreement take precedence except by mutual written acceptance of an alternate agreement of both Members for that specific event.

ARTICLE XXI.
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 XXII.
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 North Carolina Statewide Mutual Aid and Assistance Agreement 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 _____ year of_____.

Legal Name of Water/Wastewater Utility:_____

_____
Authorized Representative

_____
Title

_____
Please Print Name