

Vermont Intrastate Mutual Aid and Assistance Agreement For Water and Waste Water Utilities*

March 18, 2008

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 and Assistance.

ARTICLE I. PURPOSE

Recognizing that 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 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 utility 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 is 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 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) **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.
- D) **Associate Member** – Any non utility participant, approved by the Statewide Steering Committee, that provides a support role for the WARN program, for example State Department of Public Health, or associations, who are members of the Regional or State Steering Committees and do not officially sign the WARN agreement.
- E) **Damaged Member** - A Member who requests aid or assistance under the Mutual Aid and Assistance Program.

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- F) **Assisting Member** - A Member that responds to a request for aid or assistance under the Mutual Aid and Assistance Program.
- G) **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.
- H) **Confidential Information** – Any document shared with any signatory of this Agreement that is marked confidential, including but not limited to any map, report, notes, papers, opinion, or e-mail which relates to the system vulnerabilities of a Member or Associate Member.
- I) **Period of Assistance** - A specified period of time when an Assisting Member assists a Damaged Member. The period commences when personnel, equipment, or supplies depart from an Assisting 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.
- J) **National Incident Management System (NIMS)** - A national, standardized approach to incident management and response that sets uniform processes and procedures for emergency response operations.
- K) **FEMA** - "FEMA" means the Federal Emergency Management Agency.
- L) **Schedule of Equipment Rates** - The "Schedule of Equipment Rates" is the latest rates published by FEMA under the response and recovery directorate applicable to major disasters and emergencies.

**ARTICLE III.
ADMINISTRATION**

The Mutual Aid and Assistance Program shall be administered through a Statewide Steering Committee comprised of representatives from four regions of the state. Each region shall provide one wastewater representative, one water representative, and one representative at large. The responsibility of the regional representatives is to provide local coordination of the Mutual Aid and Assistance Program before, during, and after an emergency. The designated regions are consistent with the four existing Public Safety/Troop Districts of the State of Vermont, which are shown on the attached "VtWARN District Map".

Each group of regional representatives shall meet as needed to address Mutual Aid and Assistance Program issues, and to review mutual aid preparedness and response issues and procedures. A spokesperson for each regional group represents their regional interests on the Statewide Committee. The Statewide Steering Committee shall meet annually. In addition to representing the interests of the Members, the Statewide Committee also welcomes representatives from other organizations that may have a role to play in the Mutual Aid and Assistance Program, e.g., public health, emergency management, Vermont Rural Water Association, GMWEA, NEWWA, American Water Works Association, etc. Under the leadership of the Chair, the Statewide Committee members shall review, update, and consolidate emergency response activities for the Mutual Aid and Assistance Program.

**This program and Agreement is developed to address National Incident Management System (NIMS) requirements, assuring eligibility for federal grants through the Department of Homeland Security, or FEMA cost reimbursements. Also, the Agreement is designed to be consistent with the requirements of the Emergency Management Assistance Compact (EMAC) should Vermont's Mutual Aid Program evolve into an Interstate status.*

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**ARTICLE IV.
PROCEDURES**

In coordination with the regional representatives, 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 and updated as needed by the Statewide Steering Committee.

**ARTICLE V.
REQUESTS FOR ASSISTANCE**

Member Responsibility: Members shall identify an Authorized Official and alternates; provide contact information including 24-hour access; and maintain resource information that may be available from the utility for mutual aid and assistance response. Such contact information shall be updated annually or when changes occur and provided to the Statewide Steering Committee.

Request for Assistance: 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. Specific protocols for requesting aid shall be provided in the required procedures (Article IV).

Response to a Request for Assistance: Members of 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 would hinder response. Following the evaluation, the Authorized Representative shall inform, as soon as possible, the Damaged Member whether it will respond. If the Member is willing and able to provide assistance, the Member shall inform the Damaged Member about the type of available resources and the approximate arrival time of such assistance.

Discretion of Assisting 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 sole and 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 final.

**ARTICLE VI.
ASSISTING MEMBER PERSONNEL**

NIMS: When providing assistance under this Agreement, the Damaged Utility and Assisting Utility shall be organized and shall function under the National Incident Management System.

Control: While employees so provided may be under the supervision of the Assisting Member, the Assisting Member's employees come under the direction and control of the Damaged Member,

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consistent with the NIMS Incident Command System to address the needs identified by the Damaged Member. The Damaged Member's Authorized Official shall coordinate response activities with the designated supervisor(s) of the Assisting Member(s). The Assisting Member's designated supervisor(s) must keep accurate records of work performed by personnel during the specified Period of Assistance.

Food and Shelter: Whenever practical, Assisting Member personnel must be self sufficient for up to 72 hours. When possible, the Damaged Member shall supply reasonable food and shelter for Assisting Member personnel. If the Damaged Member is unable to provide food and shelter for assisting personnel, the Assisting Member's designated supervisor is authorized to secure the resources necessary to meet the needs of its personnel. Except as provided below, the cost for such resources must not exceed the State per Diem rates for that area. To the extent Food and Shelter costs exceed the State per Diem rates for the area, the Assisting Member must demonstrate that the additional costs were reasonable and necessary under the circumstances. Unless otherwise agreed to in writing, the Damaged Member remains responsible for reimbursing the Assisting Member for all reasonable and necessary costs associated with providing food and shelter, if such resources are not provided.

Communication: The Damaged Member shall provide Assisting 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 Assisting 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, Assisting 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 Assisting Member's Authorized Official retains the right to withdraw some or all of its resources at any time for any reason in the Assisting Member's sole and absolute discretion. Notice of intention to withdraw must be communicated to the Damaged Member's Authorized Official as soon as is practicable under the circumstances.

ARTICLE VII.
COST REIMBURSEMENT

The Damaged Member shall reimburse the Assisting Member for each of the following categories of costs incurred while providing aid and assistance during the specified Period of Assistance as agreed to in whole or in part by both parties; provided, that any Assisting Member may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the Damaged Member without charge or cost.

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Personnel: The Assisting Member shall be reimbursed by the Damaged Member for personnel costs incurred for work performed during the specified Period of Assistance. Assisting Member personnel costs shall be calculated according to the terms provided in their employment contracts or other conditions of employment. The Assisting Member designated supervisor(s) must keep accurate records of work performed by personnel during the specified Period of Assistance. Damaged Member reimbursement to the Assisting Member must consider all personnel costs, including salaries or hourly wages, costs for fringe benefits, and indirect costs.

Equipment: The Damaged Member shall reimburse the Assisting Member 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 Assisting Member in good working order as soon as is practicable and reasonable under the circumstances. As a minimum, rates for equipment use must be based on the Federal Emergency Management Agency's (FEMA) Schedule of Equipment Rates. If an Assisting Member uses rates different from those in the FEMA Schedule of Equipment Rates, the Assisting Member must provide such rates in writing to the Damaged Member prior to supplying 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 of costs. If Assisting Member must lease a piece of equipment while its equipment is being repaired, Damaged Member shall reimburse Assisting Member for such rental costs.

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

Payment Period: The Assisting Member must provide an itemized bill to the Damaged Member for all expenses incurred by the Assisting Member while providing assistance under this Agreement. The Damaged Member must send the itemized bill not later than ninety (90) days following the end of the Period of Assistance. The Assisting Member may request additional periods of time within which to submit the itemized bill, and Damaged Member shall not unreasonably withhold consent to such request. The Damaged Member must pay the bill in full on or before the forty-fifth (45th) day following the billing date. The Damaged Member may request additional periods of time within which to pay the itemized bill, and Assisting Member 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 Damaged Member.

Records: Each Assisting Member and their duly authorized representatives shall have access to a Damaged 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 Damaged Member and their duly authorized representatives shall have access to an Assisting Member's books, documents, notes, reports, papers and records which are directly pertinent to this Agreement for the purposes of reviewing

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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.

ARTICLE VIII.

DISPUTES

If any controversy or claim arises out of, or relates to, the execution of the Agreement, including, but not limited to, alleged breach of the Agreement, the disputing Members shall first attempt to resolve the dispute by negotiation, followed by mediation and finally shall be settled by arbitration in accordance with the Rules of the American Arbitration Association. Any court of competent jurisdiction may enter the judgment rendered by the arbitrators as final judgment that is binding on the parties.

ARTICLE IX.

DAMAGED MEMBER'S DUTY TO INDEMNIFY

The Damaged Member shall assume the defense of, fully indemnify and hold harmless, the Assisting Member, its officers and employees, from all claims, loss, damage, injury, and liability of every kind, nature, and description, directly or indirectly arising from Assisting Member's work during a specified Period of Assistance. The scope of the Damaged Member's duty to indemnify includes, but is not limited to, suits arising from, or related to, negligent or wrongful use of equipment or supplies on loan to the Damaged Member, or faulty workmanship or other negligent acts, errors, or omissions by Damaged Member or the Assisting Member personnel.

The Damaged Member's duty to indemnify is subject to, and shall be applied consistent with, the conditions set forth in Article X.

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 have a duty to defend, indemnify, save and hold harmless all Non-Responding Members, their officers, agents, and employees from any liability, claim, action, demand, or proceeding of whatever kind or nature arising out of a Period of Assistance.

ARTICLE XI.

WORKER'S COMPENSATION CLAIMS

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

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**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**

Members of this Agreement shall maintain an insurance policy or maintain a self insurance program that covers activities that it may undertake by virtue of membership in the Mutual Aid and Assistance Program.

**ARTICLE XIV.
CONFIDENTIAL INFORMATION**

To the extent provided by law, any Member or Associate Member shall maintain in the strictest confidence and shall take all reasonable steps necessary to prevent the disclosure of any Confidential Information disclosed under this Agreement. If any Member, Associate Member, third party or other entity requests or demands, by subpoena or otherwise, that a Member or Associate Member disclose any Confidential Information disclosed under this Agreement, the Member or Associate 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 by asserting all applicable rights and privileges with respect to such information and shall cooperate fully in any judicial or administrative proceeding relating thereto.

**ARTICLE XV.
EFFECTIVE DATE**

This Agreement shall be effective after the Water and Wastewater Utility's authorized representative executes the Agreement and the applicable Regional Group receives the Agreement. The Regional Group shall maintain a list of all Members in the respective region. The Statewide Committee Chair shall maintain a master list of all members of the Mutual Aid and Assistance Program.

**ARTICLE XVI.
WITHDRAWAL**

A Member may withdraw from this Agreement by providing written notice of its intent to withdraw to the applicable Regional Group and the Statewide Chair. Withdrawal takes effect 60 days after the appropriate officials receive notice. Withdrawal from this Agreement shall in no way affect a

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Damaged Member's duty to reimburse an Assisting Member for cost incurred during a Period of Assistance, which duty shall survive such withdrawal.

**ARTICLE XVII.
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, legislative action, creation of an interstate aid and assistance agreement, or other developments. Modifications require a simple majority vote of Members within each region and a unanimous agreement between the regions. 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 XVIII.
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 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.
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 XXI.
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 State of Vermont Intrastate Mutual Aid and Assistance Program and the Interstate Emergency Management Assistance Compact (EMAC). Members may

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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 _____ 2008.

Water /Wastewater Utility: _____

By: _____ Please Print Name: _____

By: _____ Please Print Name: _____

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**VTWARN
Member Contact Data**

Member Utility

Name: _____
System ID #: _____ WSID#: _____ PWSID#: _____
Address: _____

Phone Number: _____
County located in: _____

Contact #1

Name: _____
Title: _____
Office Phone #: _____
Mobile Phone#: _____
Pager #: _____
Email address: _____

Contact #2

Name: _____
Title: _____
Office Phone #: _____
Mobile Phone#: _____
Pager #: _____
Email address: _____

Contact #3

Name: _____
Title: _____
Office Phone #: _____
Mobile Phone#: _____
Pager #: _____
Email address: _____

<i>For office use only</i>	Region: _____
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