

**MUTUAL AID AND ASSISTANCE AGREEMENT
FOR
THE IDAHO INTRASTATE WATER/WASTEWATER AGENCY RESPONSE
NETWORK (IDWARN)**

This Mutual Aid and Assistance Agreement for the Idaho Intrastate Water/Wastewater Agency Response Network (this “Agreement”) is made and entered into by public and private water and wastewater utilities and other interested parties that have, by executing this Agreement, manifested their intent to participate in the Program.

RECITALS

A. Idaho Code section 67-2335 authorizes one or more public agencies to contract to perform any governmental service, activity or undertaking which each public agency entering into the contract is authorized by law to perform.

B. Insuring that water and wastewater systems provide and maintain water and wastewater services that promote the safety, health, comfort and convenience of the residents and visitors of Idaho communities is a fundamental function of government.

C. Utilities in Idaho have a duty to provide and maintain their service to promote the safety, health, comfort and convenience of patrons, employees, and the public.

D. The private and public entities executing this Agreement receive a reciprocal benefit by establishing processes to provide and receive assistance in advance of an emergency.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants and obligations set forth in this Agreement, and the recitals set forth above, which are incorporated herein as if set forth in full, the parties agree as follows.

**ARTICLE 1.
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 the Program. Through the Program, Members coordinate response activities and share resources during emergencies. This Agreement sets forth the procedures and standards for the administration of the 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 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, international acts, sabotage and war that is, or could reasonably be beyond the capability of the services, personnel, equipment and facilities of a Program Member to fully manage and mitigate internally.
- C. **Members**:
1. **Member**. Any public or private water or wastewater utility that manifests intent to participate in the Program by executing this Agreement.
 2. **Associate Member**: Any non-utility participant approved by the Statewide Committee that provides a support role for the Program, is a member of the Statewide Committee established under Article III, and that has executed this Agreement as an Associate Member.
 3. **Requesting Member**: A Member who requests aid or assistance under the Program.
 4. **Responding Member**: A Member who offers aid or assistance under the Program.
 5. **Non-responding Member**: A Member or Associate Member that does not provide aid or assistance during a Period of Assistance under the Program.
- D. **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.
- E. **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 personnel, equipment, or supplies return to such facility (portal to portal). All protections identified in the Agreement apply during this period. The Period of Assistance may occur during response to or recovery from an Emergency.

F. Program. The interstate program for mutual aid and assistance established by this Agreement.

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. ADMINISTRATION

The Program shall be administered through a Statewide Committee. The Statewide Committee, under the leadership of an elected chairperson, shall meet at least annually to address Program issues. The Statewide Committee shall also meet at least annually to review emergency preparedness and response procedures. The Statewide Committee shall represent the interests of the Members and Associate Members. In addition, the Statewide Committee includes representatives from the following:

United States Environmental Protection Agency (USEPA); American Water Works Association (AWWA); Federal Bureau of Investigation (FBI); Idaho Department of Environmental Quality (IDEQ); Idaho Air National Guard; Bureau of Homeland Security (BHS); Idaho Rural Water Association (IRWA); Idaho Emergency Management Association (IEMA).

Under the leadership of the chairperson, the Statewide Committee members shall plan and coordinate emergency planning and response activities for the Program. At its first meeting, the Statewide Committee shall establish initial membership of the committee and procedures for administration of the Statewide Committee, including meeting procedures and voting procedures.

ARTICLE IV. PROCEDURES

In coordination with the Idaho emergency management and the Idaho public health system, the Statewide Committee shall develop operational and planning procedures for the Program. The procedures shall be reviewed at least annually and updated as needed by the Statewide Committee.

ARTICLE V. REQUESTS FOR ASSISTANCE

A. Member Responsibility. Members shall identify an Authorized Official and alternates; provide contact information including twenty-four hour access; and, maintain resource information that may be available from the Member for mutual aid and assistance response. The

contact information shall be updated annually, or when changes occur, and provided to the Statewide Committee.

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 or 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 procedures prepared under Article IV.

B. Response to a Request for Assistance. Members are not obligated to respond to a request. After a Member receives a request for assistance, the Authorized Official will evaluate whether or not to respond, whether resources are available to respond, or if other circumstances would hinder response. Following the evaluation, the Authorized Official shall inform, as soon as possible, the Requesting Member whether it will respond. If the Member is willing and able to provide assistance, the Member shall inform the Requesting Member about the type of available resources and the approximate arrival time of such assistance.

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 sole and absolute discretion as to whether or not to respond, or the availability of resources to be used in such response. An Authorized Official's decisions on the availability of resources shall be final.

ARTICLE VI.

RESPONDING MEMBER PERSONNEL

A. National Incident Management System. When providing assistance under this Agreement, the Requesting Member and the Responding Member shall be organized and shall function under the National Incident Management System.

B. Control. While employees so provided may be under the supervision of the Responding Member, the Responding Member's employees come under the direction and control of the Requesting Member, consistent with the NIMS Incident Command System to address the needs identified by the Requesting Member. The Requesting Member's Authorized Official shall coordinate response activities with the designated supervisor(s) of the Responding Member(s). The Responding Member's designated supervisor(s) must keep accurate records of work performed by personnel during the specified Period of Assistance.

C. Food and Shelter. Whenever practical, Responding Member personnel must be self sufficient for up to seventy-two (72) hours. When possible, the Requesting Member shall supply reasonable food and shelter for Responding Member personnel. If the Requesting Member is unable to provide food and shelter for Responding Member personnel, the Responding 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 per diem reimbursement rates published by the State of Idaho Board of Examiners for the applicable period and location. To the extent food and shelter costs exceed Board of Examiners' per diem rates, the Responding Member must demonstrate that the additional costs were reasonable and necessary under the circumstances. Unless otherwise agreed to in writing, the Requesting Member remains responsible for reimbursing the Responding Member for all reasonable and necessary costs associated with providing food and shelter, if such resources are not provided by the Requesting Member.

D. Communication. The Requesting Member shall provide Responding Member personnel with radio equipment as available, or radio frequency information to program existing radios, in order to facilitate communications with local responders and Member personnel.

E. Status. Unless otherwise provided by law, the Responding Member's officers and employees retain the same privileges, immunities, rights duties and benefits provided in their respective jurisdictions.

F. Licenses and Permits. To the extent permitted by law, Responding Member personnel that 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.

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 intention to withdraw must be communicated to the Requesting Member's Authorized Official as soon as is practicable under the circumstances.

ARTICLE VII. **COST REIMBURSEMENT**

The Requesting Member shall reimburse the Responding Member for each of the following categories of costs incurred during the specified Period of Assistance as agreed in whole or in part by both parties; provided, that any Responding 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 Requesting Member without charge or cost when permitted by law to make such donation.

A. Personnel. The Responding Member shall be reimbursed by the Requesting Member for personnel costs incurred for work performed during the specified Period of Assistance. Responding Member personnel costs shall be calculated according to the terms provided in their employment contracts or other conditions of employment. The Responding Member's 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 should consider all personnel costs, including salaries or hourly wages, costs for fringe benefits, and indirect costs.

B. 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 and unloading of loaned equipment. All equipment shall be returned to the Responding 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 a Responding Member uses rates different from those in the FEMA Schedule of Equipment Rates, the Responding Member must provide such rates orally or 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 base on actual recovery of costs. If Responding Member must lease a piece of equipment while its equipment is being repaired, Requesting Member shall reimburse Responding Member for such rental costs.

C. Materials and Supplies. The Requesting Member must reimburse the Responding Member in kind or at actual replacement cost, 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 a clean, damage-free condition. Reusable supplies that are returned to the Responding Member with damage must be treated as expendable supplies for purposes of cost reimbursement.

D. Payment Period. The Responding Member must provide an itemized bill to the Requesting Member for all expenses incurred by the Responding Member while providing assistance under this Agreement. The Requesting Member must send the itemized bill not later than ninety (90) days following the end of the Period of Assistance. The responding Member may request additional periods of time within which to submit the itemized bill, and Requesting Member shall not unreasonably withhold consent to such request. The Requesting Member must pay the bill in full on or before the forty-fifth (45th) day following the billing date. The Requesting Member may request additional periods of time within which to pay the itemized bill, and Responding Member shall not unreasonably withhold consent to such request, provided, however, that all payment shall occur not later than one (1) year after the date a final itemized bill is submitted to the Requesting Member.

E. Records. Unless prohibited by law, 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. Unless prohibited by law, 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.

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.

ARTICLE IX.
REQUESTING MEMBER'S DUTY TO INDEMNIFY

Members who are public entities shall be subject to this Article only to the extent permitted by law. Specifically, the duty of a public entity to defend, indemnify or hold harmless any party shall not be extended beyond the appropriation of expenditures for such duty as required by law, including Idaho Code section 59-1015 and Article VIII, Section 4 of the Idaho Constitution. Further, the liability of a public entity shall not be increased by this Article beyond the extent required by the Idaho Tort Claims Act, Idaho Code title 6 chapter 9.

The Requesting Member who is not a public entity shall assume, to the extent allowed by the Idaho Public Utilities Commission, the defense of, and 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 during a specified Period of Assistance. The scope of the Requesting 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 Requesting Member, or faulty workmanship or other negligent acts, errors or omissions by Requesting Member or the Responding Member personnel.

The Requesting Member's duty to indemnify is subject to, and shall be complied consistently with, the conditions set forth in Article X.

ARTICLE X.
SIGNATORY INDEMNIFICATION

Members who are public entities shall be subject to this Article only to the extent permitted by law. Specifically, the duty of a public entity to defend, indemnify or hold harmless any party shall not be extended beyond the appropriation of expenditures for such duty as required by law, including Idaho Code section 59-1015 and Article VIII, Section 4 of the Idaho Constitution. Further, the liability of a public entity shall not be increased by this Article beyond the extent required by the Idaho Tort Claims Act, Idaho Code title 6 chapter 9.

In the event of liability, claim, demand, action, or proceeding of whatever kind or nature arising out of a specified Period of Assistance, the Members who are not public entities and receive and provide assistance shall, to the extent allowed by the Idaho Public Utilities Commission, have a duty to defend, indemnify, save and hold harmless all 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 Period of Assistance.

ARTICLE XI.
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 XII.
NOTICE

A party who becomes aware of a claim or suit that in anyway, directly or indirectly, contingently or otherwise, affects or might affect other Members or Associate Members of this Agreement shall provide prompt and timely notice to the Members or Associate Members who may be affected by the suit or claim. Each Member and Associate 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 Program.

ARTICLE XIV.
CONFIDENTIAL INFORMATION

To the extent authorized by law, including the Idaho Public Records Laws, Idaho Code sections 9-337 through 9-350, any Member or Associate Member shall maintain 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 request 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 applicant's authorized representative executes this Agreement and the Statewide Committee receives and approves the admission of the applicant. The Statewide Committee chair shall maintain a master list of all Members and Associate Members of the Program.

**ARTICLE XVI.
WITHDRAWAL**

A Member or Associate Member may withdraw from this Agreement by providing written notice of its intent to withdraw to the Statewide Committee chair. Withdrawal takes effect sixty (60) days after the Statewide Committee chair receives notice. 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 XVII.
MODIFICATION**

No provision of this Agreement may be modified, altered or rescinded by individual parties of this 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 the Members. The Statewide Committee chair must provide written notice to all Members and Associate Members of approved modifications to this Agreement. Approved modifications take effect sixty (60) days after the date upon which notice is sent to the Members and Associate 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 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.
MISCELLANEOUS**

- A. No Third Party Beneficiaries. This Agreement is for the sole benefit of the Members and no person or entity has any rights under this Agreement as a third party beneficiary.
- B. Assignment Prohibited. No party may assign benefits or delegate duties created by this Agreement and such assignments and delegations are without effect.
- C. No Authority to Bind Other Parties or Partnership. Neither the Program nor any party has the authority to enter into contracts or agreements on behalf of one or more parties to this Agreement. This Agreement does not create a partnership between the parties and nothing contained herein shall be interpreted to create an employer-employee, master-servant, a joint venture, or principal-agent relationship between any party in any respect.

ARTICLE XII.
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 Program 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.

IN WITNESS WHEREOF, the Members and Associate Members executing a signature page attached hereto have entered into this Agreement effective as set forth in Article XV above. This Agreement may be executed in counterparts by the execution of signature pages. Each such counterpart shall be deemed as an original all of which together with the terms herein shall be considered one and the same Agreement.

[Signature Pages Follow]

SIGNATURE PAGE

**MUTUAL AID AND ASSISTANCE AGREEMENT FOR THE IDAHO INTRASTATE
WATER/WASTEWATER AGENCY RESPONSE NETWORK (IDWARN)**

(Organization Name)

By _____
Its _____

Date: _____

SIGNATURE PAGE