

# **Illinois Water and Wastewater Mutual Aid and Assistance Agreement**

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

*WHEREAS*, the Constitution of the State of Illinois, 1970, Article VII, Section 10, (hereinafter "Act") authorizes units of local government to contract or otherwise associate among themselves in any manner not prohibited by law or ordinance; and

*WHEREAS*, any community (including Chicago) with a population over 25,000 is a home rule unit of local government under the 1970 Constitution of the State of Illinois and as such may exercise any power and perform any function pertaining to its government and affairs; and

*WHEREAS*, the Act provides that any one or more public agencies may contract with any one or more other public agencies to set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties; and

*WHEREAS*, the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., provides that any power or powers, privileges or authority exercised or which may be exercised by a unit of local government may be exercised and enjoyed jointly with any other unit of local government including a unit of local government from another state; and

*WHEREAS*, the Parties to this Agreement may voluntarily agree to participate in intrastate mutual aid and assistance activities conducted under the Illinois Intrastate Mutual Aid and Assistance Program and the Interstate Emergency Management Assistance Compact (EMAC). Parties may voluntarily agree to participate in an interstate Mutual Aid and Assistance Program for water and waste water agencies through this Agreement if such a program were established; and

*WHEREAS*, some of the Parties hereto are units of local government as defined by the Constitution of the State of Illinois and the Intergovernmental Cooperation Act; and

*WHEREAS*, the Parties recognize that they are vulnerable to a variety of potential natural and man-made disasters; and

*WHEREAS*, the Parties to this Agreement wish to provide mutual aid and assistance to one another during times of utility emergencies; and

*NOW, THEREFORE*, in consideration of the option of each signatory hereto to provide/receive mutual aid and assistance to/from any other signatory hereto upon the terms and conditions set forth herein, the Parties agree as follows:

## **SECTION I: PURPOSE**

Recognizing that emergencies may require aid or assistance in the form of personnel, equipment, materials, services and supplies from outside the area of impact, the signatory utilities hereby establish an Intrastate Mutual Aid and Assistance Program called the Illinois Water and Wastewater Agency Response Network (ILWARN). Through ILWARN, Members coordinate response activities and share resources during emergencies. This Agreement sets forth the procedures and standards for the administration of ILWARN.

## **SECTION II: DEFINITIONS**

The following definitions will apply to the terms appearing in this Agreement.

- 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 could reasonably be beyond the capability of the services, personnel, equipment, and facilities of an ILWARN Member to fully manage and mitigate internally.
  
- C. Member – Any public or private Water or Wastewater Utility that manifests its intent to participate in the Mutual Aid and Assistance Program by executing this Agreement.
  - 1. Requesting Member – A Member who requests aid or assistance under the Illinois Water and Wastewater Agency Response Network (ILWARN).
  - 2. Responding Member – A Member that responds to a request for aid or assistance under the Illinois Water and Wastewater Agency Response Network (ILWARN).
  - 3. Non-Responding Member - A Member or Associate Member that does not provide aid or assistance during a Period of Assistance under the Illinois Water and Wastewater Agency Response Network (ILWARN).

- D. Associate Members – Any non-utility participant, approved by the ILWARN Steering Committee, that provides a support role for the ILWARN program, for example; Illinois Environmental Protection Agency, Illinois Emergency Management Agency, Illinois Department of Public Health, or associations, that do not sign the ILWARN Agreement.
- E. 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.
- F. Period of Assistance – A specified period of time when a Responding Member assists a Requesting Member. The period commences when personnel, equipment, materials, services, 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.
- H. Illinois Section AWWA (ISAWWA) - The Illinois Section of the American Water Works Association.
- I. ILWARN – The acronym for the Illinois Water and Wastewater Agency Response Network.
- J. Steering Committee – Statewide committee that shall plan and coordinate emergency planning and response activities for the Illinois Water and Wastewater Agency Response Network (ILWARN).

### **SECTION III: RESPONSIBILITY OF PARTIES**

- A. *PROVISION OF AID.* Each Member recognizes that it may be requested to provide aid and assistance at a time when it is necessary to provide similar aid and assistance to the Member's own constituents. This Agreement shall not be construed to impose any unconditional obligation on any Member to provide aid and assistance. A Member may choose not to render aid and assistance for any reason.
- B. *RECRUITMENT.* The Members hereby encourage each other to enlist other agencies to adopt and execute this Agreement.
- C. *IMMUNITIES.* All immunities provided by law to the Members shall be fully applicable to the Members providing or receiving aid and assistance pursuant to this Agreement, including, but not limited to, the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101, et seq.

#### **SECTION IV: OPERATIONAL PROCEDURES:**

In coordination with the emergency management and public health systems of the state, the ILWARN Steering Committee shall develop operational and planning procedures for the Illinois Water and Wastewater Agency Response Network (ILWARN). These procedures shall be reviewed at least annually and updated as needed by the ILWARN Steering Committee.

#### **SECTION V: RESPONDING MEMBER PERSONNEL**

- A. National Incident Management System (NIMS) - When providing assistance under this Agreement, the Requesting Member and Responding Member should be organized and should function under the NIMS.
- B. Control - While employees may be provided under this Agreement by a 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's personnel must be self sufficient for up to 72 hours. When possible, the Requesting Member shall supply reasonable food and shelter for Responding Member's personnel. If the Requesting Member is unable 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 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 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.
- 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 utility personnel.
- E. Status - Unless otherwise provided by law, the Responding Member's officers and employees, and agents 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 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.

## **SECTION VI: DOCUMENTATION OF COST & REIMBURSEMENT OF COST**

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 personnel, equipment or donate such personnel, equipment, materials, supplies or services to the Requesting Member without charge or cost.

- A. Personnel and Services—The Responding Member shall be reimbursed by the Requesting Member for personnel and services costs incurred for work performed during the specified Period of Assistance. Responding Member personnel and services 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 shall consider all personnel or services 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/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 or rates published by the Illinois Department of Transportation (IDOT). 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 rates other than the above must be reached in writing prior to dispatch of the equipment. Reimbursement for equipment not referenced on the FEMA Schedule of Equipment Rates or the IDOT rate schedule must be developed based 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 – Unless mutually agreed upon otherwise, 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 Responding 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 sixtieth (60<sup>th</sup>) 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 year after the date a final itemized bill is submitted to the Requesting Member.
- E. Records - Each Responding Member and its 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.

## **SECTION VII: 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 Member 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. Each party involved in such a controversy or claim shall bear its own costs for dispute resolution.

## **SECTION VIII: REQUESTING MEMBERS DUTY TO INDEMNIFY**

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 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 applied consistent with, the conditions set forth in Section IX of this Agreement.

## **SECTION IX: 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, demand, action, or proceeding of whatever kind or nature arising out of a Period of Assistance.

## **SECTION X: WORKERS 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.

## **SECTION XI: NOTICE OF CLAIM OR SUIT**

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.

## **SECTION XII: INSURANCE**

Each Member shall bear the risk of liability for its utility and the utility's employees' acts and omissions and shall determine for itself what amount of insurance it should carry, if any. Each Member understands and agrees that any insurance coverage obtained shall in no way limit that Party's responsibility under Sections VIII and IX of this Agreement to indemnify and hold the other parties to this Agreement harmless from such liability.

## **SECTION XIII: SECURITY**

Responding Members shall reasonably comply with the Security procedures of the Requesting Members.

## **SECTION XIV: CONFIDENTIAL INFORMATION**

To the extent provided by law, any 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, third party, or other entity requests or demands, by subpoena, Freedom of Information Act request, 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 by asserting all applicable rights and privileges with respect to such information and shall cooperate fully in any judicial or administrative proceeding relating thereto.

## **SECTION XV: EFFECTIVE DATE**

This Agreement shall be effective after the Water and Wastewater Utility's authorized representative executes the Agreement and the Executive Director of the Illinois Section AWWA receives the Agreement. The Illinois Section AWWA shall maintain a list of all Members of the Mutual Aid and Assistance Program and maintain copies of the signed Agreement.

## **SECTION XVI: INITIAL TERM OF AGREEMENT; RENEWAL; TERMINATION**

The initial term of this Agreement shall be one (1) year from its effective date. Thereafter, this Agreement shall automatically renew for additional one-year terms commencing on the anniversary of the effective date of this Agreement. Any Member may withdraw from this Agreement at any time by giving written notice to the Illinois Section AWWA. The notice shall not be effective until sixty (60) days after the notice has been received by the Illinois Section AWWA. A Member's withdrawal from this Agreement shall not affect that Member's liability or obligation incurred under this Agreement prior to the date of withdrawal. This Agreement shall continue in force and effect as to all other Members until such time as a Member withdraws. Failure to ratify any proposed amendment within sixty (60) days will signify a Member's withdrawal from the Agreement.

## **SECTION XVII: SEVERABILITY – EFFECT ON OTHER AGREEMENTS**

Should any clause, sentence, provision, paragraph, or other part of this Agreement be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Agreement. Each of the Members declares that it would have entered into this Agreement irrespective of the fact that any one or more of this Agreement's clauses, sentences, provisions, paragraphs, or other parts have been declared invalid. Accordingly, it is the intention of the Members that the remaining portions of this Agreement shall remain in full force and effect without regard to the clause(s), sentence(s), provision(s), paragraph(s), or other part(s) invalidated.

## **SECTION XVIII: INTRASTATE AND INTERSTATE MUTUAL AID AND ASSISTANCE PROGRAMS**

To the extent practicable, Members of this Agreement may voluntarily participate in Mutual Aid and Assistance activities conducted under the Illinois Intrastate Mutual Aid and Assistance 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.

## **SECTION XIX: WAIVER**

Failure to enforce strictly the terms of this Agreement on one or more occasions shall not be deemed a waiver of the right to enforce strictly the terms of this Agreement on any other occasion.

## **SECTION XX: PRIOR AGREEMENTS**

To the extent that prior agreements between signatories to this Agreement are inconsistent with this Agreement, all prior agreements for mutual aid and assistance between the parties hereto are suspended.

## **SECTION 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 shall 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.

## **SECTION XXII: MODIFICATIONS**

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 all Members. The Illinois Section AWWA Executive Director 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.

## **SECTION XXIII: EXECUTION IN COUNTERPARTS**

This Agreement is executed in counterparts. The existence of a duly executed and subsisting counterpart of this document by the Requesting Party and a duly executed and subsisting counterpart of this document by any Responding Party when on file with the ISAWWA will document the contract between the Requesting Party and any Responding Party for assistance provided to the former by the latter pursuant to the terms hereof. A Requesting or Responding Party may rely on the written certification of the ISAWWA as to the signatory status of any purported participant in the ILWARN program.

NOW, THEREFORE, the Water or Wastewater Utility listed here manifests its intent to be a Member of the Illinois Water and Wastewater Agency Response Network (ILWARN) by executing this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

Water/Wastewater Utility: \_\_\_\_\_

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

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

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

Title \_\_\_\_\_

\_\_\_\_\_  
Please Print Name

\_\_\_\_\_  
Please Print Name

Approved as to form and legality

By: \_\_\_\_\_  
Attorney for Utility

\_\_\_\_\_  
Please Print Name

PLEASE NOTE: Attach a copy of your ILWARN registration form to this document when you submit it. Thank you.