

# **Pennsylvania Mutual Aid Agreement for Water/Wastewater Providers**

**(2007 Amended and Restated)**

This 2007 Amended and Restated Pennsylvania Mutual Aid Agreement for Water/Wastewater Providers (“Agreement”) is made and entered into by public and private water and wastewater service providers that have, by executing this Agreement, manifested their intent to participate in an Intrastate Program for Mutual Aid and Assistance, which is known as the Pennsylvania Water/Wastewater Agency Response Network (PaWARN) (each a “Party,” and collectively, “the Parties”).

## **Article I**

### **Purpose**

Recognizing that emergencies may require assistance in the form of personnel, equipment, and supplies from outside the area of impact, the signatory utilities established PaWARN.

PaWARN was established to provide a method whereby water/wastewater utilities sustaining physical damage or operational disruptions from natural or man made events can obtain emergency and/or mutual assistance, in the form of personnel, equipment, and materials and other associated services necessary, from other water/wastewater utilities.

The purpose of this Agreement is to formally document such program. This Agreement is available to all water or wastewater (or both) providers, public or private, in the Commonwealth of Pennsylvania.

Through PaWARN, Members coordinate response activities and share resources during emergencies. This Agreement sets forth the procedures and standards for the administration of PaWARN.

## **Article II**

### **Definitions**

- A. **Emergency**: A natural or manmade event that is, or is likely to be, beyond the control of the services, personnel, equipment, and facilities of a Member.
- B. **Member**: Any public or private water or wastewater (or both) provider that manifests intent to participate in PaWARN by causing this Agreement to be executed.
- C. **Authorized Official**: An employee or employees of a Member that is authorized by the Member’s governing board or management to request assistance or offer assistance under this Agreement.

- D. Requesting Member: A Member who requests assistance under PaWARN.
- E. Responding Member: A Member that responds to a request for assistance under the PaWARN.
- F. Period of Assistance: A specified period of time when a Responding Member assists a Requesting Member. The period commences when personnel, equipment, or supplies depart from a Responding Member's facility and ends when the resources (excluding used materials or supplies) 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. Associate Member: Any non-utility participant, approved by the Statewide PaWARN Committee, that provides a support role for PaWARN (such as Commonwealth agencies or associations), who are members of the Statewide PaWARN Committee and do not officially sign the PaWARN Agreement.
- I. Non-Responding Member: A Member or Associate Member that does not provide aid or assistance during a Period of Assistance under PaWARN.
- J. 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.

### **Article III** **Administration**

The Mutual Aid and Assistance Program known as PaWARN shall be administered through Regional Representatives, as needed, and a Statewide PaWARN Committee. The purpose of a Regional Representative is to provide local coordination of the Program before, during, and after an emergency.

The designated regions are consistent with the regional offices of the Pennsylvania Department of Environmental Protection (PA DEP) (e.g., Northeast, North Central, Northwest, Southeast, South Central and Southwest). The Region Representatives, under the leadership of a Regional Chairperson (selected by the Regional Representatives), shall meet at least annually to address PaWARN issues. The Regional Representatives shall also meet annually to review emergency preparedness and response procedures.

## **Article IV** **Procedures**

In coordination with the Regional Representatives, emergency management, and the public health system of the state, the Statewide PaWARN Committee shall develop operational and planning procedures for PaWARN. These procedures shall be reviewed/updated at least annually by the Statewide PaWARN Committee.

## **Article V** **Requests For Assistance**

- A. Member Responsibility: Members shall identify in writing an Authorized Official and an Authorized Official's alternate; provide contact information including 24-hour access; and maintain resource information made available by the Member 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, 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).

- B. 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 Official shall inform, as soon as possible, the Requesting Member whether it has the resources to 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 absolute discretion as to the availability of resources. 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 Responding Member shall function under the National Incident Management System.

- B. Control: Responding Member personnel shall remain under the direction and control of the Responding Member. The Requesting Member's Authorized Official shall coordinate response activities with the designated supervisor(s) of the Responding Member(s). Whenever practical, Responding Member personnel must be self sufficient for up to 72 hours.
- C. Food and Shelter: The Requesting Member shall supply reasonable food and shelter for Responding Member personnel. If the Requesting Member fails to provide food and shelter for the Responding Member's personnel, the Responding Member's designated supervisor is authorized to secure the resources necessary to meet the needs of its personnel. The cost for such resources must not exceed the State per diem rates for that area. The Requesting Member remains responsible for reimbursing the Responding Member for all costs associated with providing food and shelter, if such resources are not provided at no cost to the personnel of the Responding Member.
- D. Communication: The Requesting Member shall provide Responding Member personnel with the best means of communication reasonably available to the Requesting Member (such as radio equipment or radio frequency information to program existing radios) in order to facilitate communications with local responders and other personnel.
- E. Status: Unless otherwise provided by law, the Responding Member's officers and employees retain the same privileges, immunities, rights, duties, and benefits as provided in their respective jurisdictions.
- F. Licenses and Permits: To the extent permitted by law, Responding Member personnel who hold licenses, certificates, or permits evidencing professional, mechanical, or other skills shall be allowed to carry out activities and tasks relevant and related to their respective credentials during the 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. Notice of intention to withdraw must be communicated to the Requesting Member's Authorized Official as soon as possible.

## **Article VII**

### **Cost Reimbursement**

Unless otherwise mutually agreed in whole or in part, the Requesting Member shall reimburse the Responding Member for each of the following categories of costs incurred while providing aid and assistance during the specified Period of Assistance.

- A. Personnel: Responding Member personnel are to be paid for work performed during a specified Period of Assistance according to the terms provided in their employment contracts or other conditions of employment. The Responding Member designated supervisor(s) must keep accurate records of work performed by personnel during the specified Period of Assistance. Requesting Member reimbursement to the Responding

Member must consider all personnel costs, including salaries or hourly wages, costs for fringe benefits, costs incurred for transport of equipment and personnel, and indirect costs.

- B. Equipment: The Requesting Member shall reimburse the Responding Member for the use of equipment during a specified Period of 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 Responding Member uses rates different from those in the FEMA Schedule of Equipment Rates, the Responding Member must provide such rates in writing to the Requesting Member prior to supplying resources. 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.
- 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 it incurred as a result of providing assistance under this Agreement. The Responding Member must send the itemized bill no later than ninety (90) days following the end of the Period of Assistance. The Requesting Member must pay the bill in full on or before the forty-fifth (45th) day following the billing date. Unpaid bills become delinquent upon the forty-sixth (46th) day following the billing date, and, once delinquent, the bill accrues interest at the rate of prime, as reported by the Wall Street Journal, plus two percent (2%) per annum.

## **Article VIII** **Disputes**

Any controversy or claim arising out of, or relating to, this Agreement, including, but not limited to, alleged breach of the Agreement, 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** **Requesting Member's 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, except in the case of willful misconduct or gross negligence by the Responding Member. The scope of the Requesting Member's duty to indemnify includes, but is not limited to, suits arising from, or related to, (a) negligent or wrongful use of equipment, supplies or personnel on loan to the Requesting Member, (b) or faulty workmanship or other negligent acts, errors, or omissions by the Responding Member or by the personnel on loan to the Requesting Member during the Period of Assistance.

The Requesting 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, 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 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 PaWARN.

**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 Member causes this Agreement to be executed and the applicable Regional Committee Chair receives the Agreement. The Regional Committee Chair shall maintain a list of all Members in the respective region. The Statewide Committee Chair shall maintain a master list of all members of PaWARN.

This Agreement shall continue in force and remain binding on each and every Member until December 31st of the year in which the Party executes the Agreement. This Agreement shall renew automatically for a period of one year upon the completion of the initial terms and each subsequent one year term unless and until such time a Party withdraws from participation in this Agreement.

**Article XVI**  
**Withdrawal**

A Member may withdraw from this Agreement by providing written notice of its intent to withdraw to the applicable Regional Committee Chair and the Statewide Chair. Withdrawal takes effect 60 days after the appropriate officials receive notice. Withdrawal of participation in this Agreement by a Party shall not affect the continued operation of this Agreement between and among the remaining Parties. 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 to the Agreement. Modifications to this Agreement may be due to programmatic operational changes to support the agreement. 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 PaWARN Agreements**

This Agreement supersedes the original 2007 Pennsylvania Mutual Aid Agreement for Water/Wastewater Providers.

## **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 PaWARN 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.

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Now, therefore, in consideration of the covenants and obligations set forth in this Agreement, the Water/Wastewater System listed here manifests its intent to be a Member of PAWARN, and its intent to be legally bound hereby, by causing this Agreement to be executed on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

Water/Wastewater System: \_\_\_\_\_

Attest:

_____	By: _____
Name:	Name:
Title: (Asst.) Secretary	Title: