

## **MUTUAL AID AGREEMENT FOR WATER AND WASTEWATER**

THIS MUTUAL AID AGREEMENT FOR WATER AND WASTEWATER (herein the “Agreement”) is executed by and between the authorized undersigned, on the dates and at the places, hereinafter mentioned.

WHEREAS, the utility companies providing water/wastewater to the various parishes of the State of Louisiana desire to provide a method whereby water/wastewater utilities which sustain physical damage from natural or man made disasters could obtain emergency assistance, in the form of personnel, equipment, and materials and other associated services necessary, from other water/wastewater utilities.

WHEREAS, Article VI, Section 20 of the 1974 Constitution of the State of Louisiana states that, “[e]xcept as otherwise provided by law, a political subdivision may exercise and perform any authorized power and function, including financing, jointly or in cooperation with one or more political subdivisions, either within or without the state, or with the United States or its agencies.”

WHEREAS, Article VII, Section 14(C) of the 1974 Constitution of the State of Louisiana states that, “[f]or a public purpose, the state and its political subdivisions or political corporations may engage in cooperative endeavors with each other, with the United States or its agencies, or with any public or private associations, corporation, or individual.”

WHEREAS, La. R.S. 29:730C authorizes political subdivisions to enter into suitable arrangements for furnishing mutual aid in coping with disasters and La. R.S. 29:730.1 provides that, in the event of an emergency or a disaster and upon the request of a parish president, a parish governing authority, or a parish homeland security and emergency preparedness agency, a parish president, a parish governing authority, or a parish homeland

security and emergency preparedness agency may enter the jurisdiction of the requesting parish in order to furnish manpower, materials, equipment or services, and, during the emergency or disaster, the personnel of the responding parish shall have the same power and authority as the equivalent personnel in the requesting parish.

WHEREAS, La. R.S. 33:1324, *et seq.*, provides that, for a public purpose, public entities, parishes, municipalities and political subdivisions may engage in and make cooperative endeavor agreements between themselves for specific purposes, including but not limited to, public utility services, such as water, electricity, gas, roads, bridges, causeways, tunnels, ferries and other highway facilities, and public transportation; sewers, drains and garbage and other refuse collection and disposal; the construction or acquisition or improvement, and operation, repair and maintenance of public projects or improvements, whether or not rentals or other charges are fixed and collected for the use thereof, including but not limited to roads, bridges, tunnels, causeways, ferries and other highway facilities, water systems, electric systems, sewer systems, drainage systems, incinerators and garbage collections and disposal systems, and public transportation systems; and flood control, drainage, and reclamation systems.

WHEREAS, La. R.S. 33:1326(A)(1)(a) provides that, “[a]ny parish, municipality, or political subdivision, or combination thereof, operating a gas, water, or electric light or power system, sewerage plant, or transportation system may extend such services to persons and business organizations located outside its territorial bounds, or to any other parish or municipality.”

WHEREAS, for the foregoing reasons, the utility companies providing water/wastewater to the various parishes of the State of Louisiana desire to formally document such cooperative efforts for mutual assistance in this Agreement.

NOW, THEREFORE, in consideration of the covenants set forth herein, the undersigned agree and contract, as follows:

1. DEFINITIONS. As used in this Agreement, defined terms have the meanings hereinafter set forth:

a. Utility. “Utility” means a municipality or political subdivision or private entity which provides, either solely or in connection with other services, or commodities, water, and/or the treatment of wastewater and/or sewerage, to the general public which it serves.

b. Participating Utility. A “Participating Utility” is a Utility which executes this Agreement.

c. Damaged Utility. A “Damaged Utility” is a Participating Utility which sustains physical damage to its water/wastewater system due to a natural or man made disaster and seeks assistance from an Assisting Utility pursuant to this Agreement.

d. Assisting Utility. An “Assisting Utility” is a Participating Utility which provides assistance to a Damaged Utility pursuant to this Agreement.

e. FEMA. “FEMA” means the Federal Emergency Management Agency.

f. Authorized Representative. An “Authorized Representative” is an employee of a Participating Utility authorized by its governing board to request or offer assistance under the terms of this Agreement. A list of the Authorized Representatives for each Participating Utility with their contact information (*i.e.*, e-mail address, municipal address and cell and/or office number) shall be attached to this Agreement as Appendix “A.”

g. Period of Assistance. The “Period of Assistance” is the period of time beginning with the departure of any personnel of the Assisting Utility from any point for the purpose of traveling to the Damaged Utility in order to provide assistance, pursuant to this

Agreement, and ending upon the return of all personnel of the Assisting Utility, after providing the assistance requested, to their residence or place of Work, whichever is first to occur.

h. 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.

i. Work or Work-Related Period. “Work Period” or “Work-related Period” is any period of time in which either the personnel or equipment of the Assisting Utility are being used by the Damaged Utility to provide assistance. Specifically included within such period of time are rest breaks when the personnel of the Assisting Utility will return to active work within a reasonable time. Also included is mutually agreed upon rotation of personnel and equipment.

2. PROCEDURE TO INVOKE ASSISTANCE. In the event that a particular Utility becomes (or is exposed to conditions which reasonably threaten to become) a Damaged Utility, the following procedure shall be followed:

a. Initial Contact. The Damaged Utility shall contact the Authorized Representative of one (1) or more of the Participating Utilities and provide them with the following information:

1. A general description of the damage sustained;
2. The part of the water/wastewater system for which assistance is needed;
3. The amount, type and/or qualifications of personnel, equipment, materials and supplies needed and a reasonable estimate of the length of time they will be needed;

4. The present weather conditions affecting the geographical area that the Damaged Utility serves or requires assistance and the forecast for the next twenty-four (24) hours;

5. A specific time and place for a representative of the Damaged Utility to meet the personnel and equipment of the Assisting Utility; and

6. The identification of work conditions and special constraints or shortages such as the availability of fuel supplies, lodging/meal support, medical facilities, security, communications, etc.

b. Discretionary Rendering of Assistance. When contacted by a Damaged Utility, the Authorized Representative of a Participating Utility shall assess its situation to determine whether it is capable of providing assistance. Notwithstanding any provision contained herein to the contrary, rendering assistance pursuant to this Agreement is entirely at the discretion of the Participating Utilities. No Participating Utility shall be under any obligation to provide assistance to a Damaged Utility. This Agreement to render aid is expressly not contingent upon a declaration of a major disaster or emergency by the federal government or upon receiving federal funds. Furthermore, in the event assistance is rendered pursuant hereto, the Assisting Utility retains the right to withdraw some or all of its resources at any time. Notice of the Assisting Utilities' intention to withdraw some or all of its resources must be communicated to the Authorized Representative of the Damaged Utility immediately.

c. Aid By Assisting Utility. If the Authorized Representative determines that the Assisting Utility is capable of and willing to provide assistance, the Assisting Utility shall so notify the Authorized Representative of the Damaged Utility and provide the following information:

1. A complete description of the personnel, equipment and materials to be furnished to the Damaged Utility. The description of the various personnel to be furnished shall include, but not be limited to, each individual's credentials, such as, identification and their affiliation with the Assisting Utility.

2. The estimated length of time the personnel, equipment and materials shall be available;

3. The work experience and ability of the personnel and the capability of the equipment to be furnished;

4. The name of the person or persons to be designated as supervisory personnel along with that person's cell number, e-mail address and electronic personal identification number, if applicable; and

5. The estimated time when the assistance provided shall arrive at the location designated by the Authorized Representative of the Damaged Utility.

d. Direction and Supervision of Personnel and Equipment. The personnel and equipment of the Assisting Utility shall remain, at all times, under the direct supervision and control of the designated supervisory personnel of the Assisting Utility unless otherwise provided herein. In instances where only equipment is provided by the Assisting Utility, the ownership of said equipment shall remain with the Assisting Utility and said equipment shall be returned to the Assisting Utility immediately upon request. Designated supervisory personnel of the Damaged Utility shall suggest work assignments and schedules for the personnel of the Assisting Utility; however, the designated supervisory personnel of the Assisting Utility shall have the exclusive responsibility and authority for assigning work and establishing work schedules for the personnel of the Assisting Utility during a Work Period. The designated

supervisory personnel of the Assisting Utility shall maintain daily personnel time records and a log of equipment hours; be responsible for the operation and maintenance of the equipment furnished by the Assisting Utility, unless agreed otherwise, and report work progress to the Damaged Utility.

However, in the event that the law of the Damaged Utility requires personnel to be certified or licensed, in a particular area or field in order to perform certain task or procedures, and said personnel of the Assisting Utility are not certified or licensed, then said personnel of the Assisting Utility shall be assigned to work under the supervision and direction of designated supervisory personnel of the Damaged Utility who are licensed or certified in the particular area or field. In this instance, the designated supervisory personnel of the Damaged Utility so licensed or certified shall have the responsibility and authority for assigning work and establishing work schedules for the personnel of the Assisting Utility under its supervision, and shall maintain daily personnel time records to be provided to the Assisting Utility for billing.

In any event, the parties to this Agreement acknowledge that the personnel supplied pursuant to this Agreement are employed by the party supplying the personnel.

e. Food and Housing. The Damaged Utility shall have the responsibility of providing food and housing for the personnel of the Assisting Utility, from the time of departure from their regularly scheduled work location, until the time of return to their regularly scheduled work location. The food and housing provided shall be subject to the approval of the supervisory personnel of the Assisting Utility.

However, in the event the Damaged Utility is unable to provide food and housing to the personnel of the Assisting Utilities, then the Assisting Utility shall provide food and housing to its personnel and the Damaged Utility shall reimburse the Assisting Utility for all

reasonable and customary costs associated with providing food and housing, as provided hereinbelow.

f. Communication During Assistance. The Damaged Utility shall have the responsibility of providing communications between the personnel of the Assisting Utility and the Damaged Utility, unless agreed otherwise.

g. Protection of Assisting Utility. The Damaged Utility shall provide, or cause to be provided, for the protection of the Assisting Utility and its personnel and equipment, all necessary or appropriate security and protection.

3. REIMBURSABLE EXPENSES. The terms and conditions governing reimbursement for any assistance provided under this Agreement shall be agreed to, prior to the providing of such assistance, and shall be in accordance with the following provisions:

a. Personnel. During the Period of Assistance, the Assisting Utility shall continue to pay its employees/personnel according to its then prevailing rules and regulations. The Damaged Utility shall reimburse the Assisting Utility for all direct and indirect payroll costs and expenses incurred during the Period of Assistance, including, but not limited to, employee pensions and benefits. The Assisting Utility shall be responsible for providing worker's compensation benefits and administering worker's compensation.

b. Food and Housing. In the event, the Assisting Utility is required to provide food and housing to its personnel, then the Damaged Utility shall reimburse the Assisting Utility for the actual cost of the food and housing. The cost for such resources shall be reasonable and customary.

c. Equipment. The Assisting Utility shall be reimbursed for the use of its equipment during the Period of Assistance according to the Schedule of Equipment Rates.

If an Assisting Utility uses an alternate basis of rates for equipment listed on the Schedule of Equipment Rates, it shall provide such rates to the Damaged Utility prior to providing assistance. Rates for equipment not referenced on the Schedule of Equipment Rates shall be developed based on actual recovery of costs.

d. Materials and Supplies. The Assisting Utility shall be reimbursed for all materials and supplies furnished by it and used or damaged during the Period of Assistance, unless such damage is caused by negligence of the Assisting Utility's personnel. The measure of reimbursement shall be the replacement cost of the materials and supplies used or damaged, plus ten percent (10%) of such cost. In the alternative, the parties may agree that the Damaged Utility will replace, with a like kind and quality as determined by the Assisting Utility, the materials and supplies used or damaged.

e. Payment. Unless mutually agreed otherwise, the Assisting Utility shall bill the Damaged Utility for all expenses within a reasonable time following the Period of Assistance. The Damaged Utility shall pay the bill in full no later than forty-five (45) days following the billing date. Unpaid bills shall become delinquent upon the forty-sixth (46th) day following the billing date, and once delinquent, shall accrue interest at the rate of prime plus two percent (2%) per annum as reported by the Wall Street Journal.

f. Reimbursement by FEMA. Notwithstanding any provision contained herein to the contrary, this Agreement is not intended to prevent or hinder the Damaged Utility or the Assisting Utility from seeking reimbursement from FEMA.

4. INSURANCE. Each Participating Utility shall bear the risk of its own actions, as it does with its day-to-day operations, and determine for itself what kind of insurance, and in what amounts, it should carry. Nothing herein shall constitute or be construed as a waiver of any

sovereign immunity or other exemption or limitation on liability that a Participating Utility may enjoy.

5. NOTICE OF TERMINATION OF AGREEMENT. Any party to this Agreement may terminate participation in this Agreement upon thirty (30) days' written notice addressed to the Executive Director of the Louisiana Rural Water Association. However, termination of a party's participation in this Agreement shall not relieve or release said party of any liability thereafter incurred as a result of this Agreement.

6. LOCATION OF AGREEMENT. The original Agreement and all signatory pages shall be kept by the Louisiana Rural Water Association, at its office located at 1325 Third Avenue, Kinder, Louisiana 70648-3420. Any change in the designated Authorized Representative or their contact information shall be provided to the Executive Director of the Louisiana Rural Water Association and maintained with this Agreement and noted in Appendix "A" of this Agreement.

7. COUNTERPARTS. This Agreement may be executed in one or more counterparts, with each counterpart being deemed an original Agreement, but with all counterparts being considered one Agreement.

8. EXECUTION. Each party hereto has read, agreed to and executed this Agreement on the date indicated.

9. NON-ASSIGNABILITY. This Agreement is strictly between the undersigned and cannot be assigned, in whole or in part, by the undersigned to any other party.

10. PRIOR AGREEMENTS. This Agreement supercedes all prior Agreements between the Participating Members to the extent that such prior Agreements are inconsistent with this Agreement.

11. AMENDMENTS. This Agreement may be amended only by written agreement by and between the Participating Utilities.

IN WITNESS WHEREOF, in consideration of the covenants and obligations contained herein, the Participating Utility listed here, as a Participating Utility duly executes this Agreement this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Utility Name:

\_\_\_\_\_

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

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

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

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

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

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

Approved as to form and legality.

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

Utilities Attorney

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