Mutual Aid and Assistance Agreement for Alaska
Water / Wastewater Agency Response Network (AKWARN)

AGREEMENT

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 such as freezing, drought, earthquake, volcanic activity, tsunami, releases of oil or hazardous material or sewage, contamination, utility or transportation emergencies, mechanical or electrical malfunctions, disease, infestation, civil disturbance, intentional acts or sabotage, that 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. Members – Any public or private Water or Wastewater Utility that manifests intent to participate in the Mutual Aid and Assistance Program by executing this Agreement.

   1. Associate Member – Any non-utility participant, approved by the Steering Committee, that provides a support role for the AKWARN program, such as the Alaska Division of Homeland Security and Emergency Management, the Alaska Department of Environmental Conservation, and other applicable associations, and do not officially sign the WARN agreement.
2. Requesting Member – A Member who requests aid or assistance under the Mutual Aid and Assistance Program.

3. Responding Member – A Member that responds to a request for aid or assistance under the Mutual Aid and Assistance Program.

4. 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.

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 a Responding Member begins mobilization of personnel, equipment, or supplies to depart from the Responding Member’s facility and ends when the resources return to their facility and are demobilized. 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.

F. National Incident Management System (NIMS): A national, standardized approach to incident management and response that sets uniform processes and procedures for emergency response operations.

G. Steering Committee: The decision making body for AKWARN which is responsible for oversight and administration of the AKWARN Program.

ARTICLE III.
ADMINISTRATION

The Mutual Aid and Assistance Program shall be administered through a Steering Committee. In addition to representing the interests of the Members, the Steering Committee includes representatives from the Alaska Department of Environmental Conservation, the Alaska Water Wastewater Management Association, the Alaska Rural Water Association, and other affiliated organizations. Under the leadership of the Chair, the Steering Committee members shall plan and coordinate emergency planning and response training for members of the Mutual Aid and Assistance Program. The Steering Committee shall also be responsible for maintaining the AKWARN website.

ARTICLE IV.
PROCEDURES

The Steering Committee shall develop operational and planning procedures for the Mutual Aid and Assistance Program. These procedures shall be reviewed at least annually and updated as needed by the Steering Committee.
ARTICLE V.
REQUESTS FOR ASSISTANCE

A. 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 at least annually or when changes occur, and provided to the Steering Committee via electronic format.

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 – Members of the 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 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 Member’s decisions on the availability of resources shall be final.

ARTICLE VI.
RESPONDING MEMBER PERSONNEL

A. Incident Command System (ICS) – When providing response and recovery assistance under this Agreement, the Requesting Utility shall be organized and shall function under the Incident Command 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 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 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 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 soon as it 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.

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, repairs, transportation, and loading and unloading of loaned equipment. The Responding Member must provide equipment 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 mobilization of the equipment. All equipment shall be returned to the Responding Member in good working order as soon as is practicable and reasonable under the circumstances. If the 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 Responding Member must send the itemized bill not later than (90) ninety dates 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-year after the date a final itemized bill is submitted to the Requesting Member.

E. Records - 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. 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, 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.
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 X.
NOTICE
A Member who becomes aware of a claim or suit that in anyway, 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 XI.
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 kinds of insurance, and in what amounts, it should carry. 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. Nothing herein shall act or be construed as a waiver of any sovereign immunity or other exemption or limitation on liability that a Participating Utility may enjoy.

ARTICLE XII.
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 XIII.
EFFECTIVE DATE

This Agreement shall be effective after the Water and Wastewater Utility’s authorized representative executes the Agreement and the Steering Committee receives the Agreement. The Steering Committee shall maintain a master list of all members of the Mutual Aid and Assistance Program.

ARTICLE XIV.
WITHDRAWAL

A Member may withdraw from this Agreement by providing written notice of its intent to withdraw to the Statewide Chair. Withdrawal takes effect 30 days after the Statewide 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 XV.
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. The Steering Committee 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 XVI.
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 XVII.
PRIOR AGREEMENTS

This Agreement supersedes all prior Agreements between Members to the extent that such prior Agreements are inconsistent with this Agreement.

ARTICLE XVIII.
PROHIBITION ON THIRD PARTIES AND ASSIGNMENT OF RIGHTS / DUTIES

This Agreement is for the sole benefit of the Members and no person or entity will 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 will be without effect.

ARTICLE XIX.
INTRASTATE AND INTERSTATE MUTUAL AID AND ASSISTANCE PROGRAMS

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

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 and to participate in the
Alaska Water / Wastewater Response Network (AKWARN) by executing this Agreement on this  
___________ day of __________ 2009.

Water/Wastewater Utility:__________________________________________

By:__________________________  
Title:__________________________

__________________________________________  
Please Print Name

Approved as to form and legality

By:__________________________  
Attorney for Utility

__________________________________________  
Please Print Name