

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

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4
5 **AGREEMENT**

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

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12 **ARTICLE I.**
13 **PURPOSE**

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15 Recognizing that emergencies may require aid or assistance in the form of personnel,
16 equipment, and supplies from outside the area of impact, the signatory utilities hereby establish
17 an Intrastate Program for Mutual Aid and Assistance. Through the Mutual Aid and Assistance
18 Program, Members coordinate response activities and share resources during emergencies.
19 This Agreement sets forth the procedures and standards for the administration of the Intrastate
20 Mutual Aid and Assistance Program.

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23 **ARTICLE II.**
24 **DEFINITIONS**

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26 A. Authorized Official – An employee or officer of a Member utility that is authorized to:
27 1. Request assistance;
28 2. Offer assistance;
29 3. Refuse to offer assistance; or
30 4. Withdraw assistance under this agreement.
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32 B. Emergency – A natural or human caused event or circumstance causing, or imminently
33 threatening to cause, loss of life, injury to person or property, human suffering or financial
34 loss, and includes, but is not limited to, fire, explosion, flood, severe weather such as
35 freezing, drought, earthquake, volcanic activity, tsunami, releases of oil or hazardous
36 material or sewage, contamination, utility or transportation emergencies, mechanical or
37 electrical malfunctions, disease, infestation, civil disturbance, intentional acts or sabotage,
38 that is, or could reasonably be beyond the capability of the services, personnel, equipment,
39 and facilities of a Mutual Aid and Assistance Program Member to fully manage and mitigate
40 internally.
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42 C. Members – Any public or private Water or Wastewater Utility that manifests intent to
43 participate in the Mutual Aid and Assistance Program by executing this Agreement.
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45 1. Associate Member – Any non-utility participant, approved by the Steering Committee,
46 that provides a support role for the AKWARN program, such as the Alaska Division of
47 Homeland Security and Emergency Management, the Alaska Department of
48 Environmental Conservation, and other applicable associations, and do not officially sign
49 the WARN agreement.
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ARTICLE V.
REQUESTS FOR ASSISTANCE

- 4 A. Member Responsibility: Members shall identify an Authorized Official and alternates;
5 provide contact information including 24-hour access and maintain resource information that
6 may be available from the utility for mutual aid and assistance response. Such contact
7 information shall be updated at least annually or when changes occur, and provided to the
8 Steering Committee via electronic format.

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10 In the event of an Emergency, a Member's Authorized Official may request mutual aid and
11 assistance from a participating Member. Requests for assistance can be made orally or in
12 writing. When made orally, the request for personnel, equipment, and supplies shall be
13 prepared in writing as soon as practicable. Requests for assistance shall be directed to the
14 Authorized Official of the participating Member. Specific protocols for requesting aid shall
15 be provided in the required procedures (Article IV).

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

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26 C. Discretion of Responding Member's Authorized Official – Execution of this Agreement does
27 not create any duty to respond to a request for assistance. When a Member receives a
28 request for assistance, the Authorized Official shall have sole and absolute discretion as to
29 whether or not to respond, or the availability of resources to be used in such response. An
30 Authorized Member's decisions on the availability of resources shall be final.

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ARTICLE VI.
RESPONDING MEMBER PERSONNEL

- 37 A. Incident Command System (ICS) – When providing response and recovery assistance
38 under this Agreement, the Requesting Utility shall be organized and shall function under the
39 Incident Command System.

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

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49 C. Food and Shelter – Whenever practical, Responding Member personnel must be self
50 sufficient for up to 72 hours. When possible, the Requesting Member shall supply
51 reasonable food and shelter for Responding Member personnel. If the Requesting Member

1 is unable to provide food and shelter for responding personnel, the Responding Member's
2 designated supervisor is authorized to secure the resources necessary to meet the needs of
3 its personnel. Except as provided below, the cost for such resources must not exceed the
4 State per diem rates for that area. To the extent Food and Shelter costs exceed the State
5 per diem rates for the area, the Responding Member must demonstrate that the additional
6 costs were reasonable and necessary under the circumstances. Unless otherwise agreed
7 to in writing, the Requesting Member remains responsible for reimbursing the Responding
8 Member for all reasonable and necessary costs associated with providing food and shelter,
9 if such resources are not provided.

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- 11 D. Communication – The Requesting Member shall provide Responding Member personnel
12 with radio equipment as available, or radio frequency information to program existing radios,
13 in order to facilitate communications with local responders and utility personnel.
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- 15 E. Status - Unless otherwise provided by law, the Responding Member's officers and
16 employees retain the same privileges, immunities, rights, duties and benefits as provided in
17 their respective jurisdictions.
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- 19 F. Licenses and Permits – To the extent permitted by law, Responding Member personnel that
20 hold licenses, certificates, or permits evidencing professional, mechanical, or other skills
21 shall be allowed to carry out activities and tasks relevant and related to their respective
22 credentials during the specified Period of Assistance.
- 23 G. Right to Withdraw - The Responding Member's Authorized Official retains the right to
24 withdraw some or all of its resources at any time for any reason in the Responding
25 Member's sole and absolute discretion. Notice of intention to withdraw must be
26 communicated to the Requesting Member's Authorized Official as soon as soon as it is
27 practicable under the circumstances.
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30 **ARTICLE VII.**
31 **COST- REIMBURSEMENT**

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33 The Requesting Member shall reimburse the Responding Member for each of the following
34 categories of costs incurred during the specified Period of Assistance as agreed in whole or in
35 part by both parties; provided, that any Responding Member may assume in whole or in part
36 such loss, damage, expense, or other cost, or may loan such equipment or donate such
37 services to the Requesting Member without charge or cost.

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- 39 A. Personnel – The Responding Member shall be reimbursed by the Requesting Member for
40 personnel costs incurred for work performed during the specified Period of Assistance.
41 Responding Member personnel costs shall be calculated according to the terms provided in
42 their employment contracts or other conditions of employment. The Responding Member's
43 designated supervisor(s) must keep accurate records of work performed by personnel
44 during the specified Period of Assistance. Requesting Member reimbursement to the
45 Responding Member should consider all personnel costs, including salaries or hourly
46 wages, costs for fringe benefits, and indirect costs.
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- 1 B. Equipment – The Requesting Member shall reimburse the Responding Member for the use
2 of equipment during the specified Period of Assistance, including, but not limited to,
3 reasonable rental rates, all fuel, lubrication, maintenance, repairs, transportation, and
4 loading and unloading of loaned equipment. The Responding Member must provide
5 equipment rates orally or in writing to the Requesting Member prior to supplying the
6 equipment. Mutual agreement on which rates are used must be reached in writing prior to
7 mobilization of the equipment. All equipment shall be returned to the Responding Member
8 in good working order as soon as is practicable and reasonable under the circumstances. If
9 the Responding Member must lease a piece of equipment while its equipment is being
10 repaired, Requesting Member shall reimburse Responding Member for such rental costs.
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- 12 C. Materials and Supplies – The Requesting Member must reimburse the Responding Member
13 in kind or at actual replacement cost, plus handling charges, for use of expendable or non-
14 returnable supplies. The Responding Member must not charge direct fees or rental charges
15 to the Requesting Member for other supplies and reusable items that are returned to the
16 Responding Member in a clean, damage-free condition. Reusable supplies that are
17 returned to the Responding Member with damage must be treated as expendable supplies
18 for purposes of cost reimbursement.
19
- 20 D. Payment Period – The Responding Member must provide an itemized bill to the Requesting
21 Member for all expenses incurred by the Responding Member while providing assistance
22 under this Agreement. The Responding Member must send the itemized bill not later than
23 (90) ninety days following the end of the Period of Assistance. The Responding Member
24 may request additional periods of time within which to submit the itemized bill, and
25 Requesting Member shall not unreasonably withhold consent to such request. The
26 Requesting Member must pay the bill in full on or before the forty-fifth (45th) day following
27 the billing date. The Requesting Member may request additional periods of time within
28 which to pay the itemized bill, and Responding Member shall not unreasonably withhold
29 consent to such request, provided, however, that all payment shall occur not later than one-
30 year after the date a final itemized bill is submitted to the Requesting Member.
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- 32 E. Records - Each Responding Member and their duly authorized representatives shall have
33 access to a Requesting Member's books, documents, notes, reports, papers and records
34 which are directly pertinent to this Agreement for the purposes of reviewing the accuracy of
35 a cost bill or making a financial, maintenance or regulatory audit. Each Requesting Member
36 and their duly authorized representatives shall have access to a Responding Member's
37 books, documents, notes, reports, papers and records which are directly pertinent to this
38 Agreement for the purposes of reviewing the accuracy of a cost bill or making a financial,
39 maintenance or regulatory audit. Such records shall be maintained for at least three (3)
40 years or longer where required by law.
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1 **ARTICLE VIII.**
2 **DISPUTES**
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4 If any controversy or claim arises out of, or relates to, the execution of the Agreement, including,
5 but not limited to, alleged breach of the Agreement, the disputing Members shall first attempt to
6 resolve the dispute by negotiation, followed by mediation and finally shall be settled by
7 arbitration in accordance with the Rules of the American Arbitration Association. Any court of
8 competent jurisdiction may enter the judgment rendered by the arbitrators as final judgment that
9 is binding on the parties.
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13 **ARTICLE IX.**
14 **WORKER'S COMPENSATION CLAIMS**
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16 The Responding Member is responsible for providing worker's compensation benefits and
17 administering worker's compensation for its employees. The Requesting Member is responsible
18 for providing worker's compensation benefits and administering worker's compensation for its
19 employees.
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22 **ARTICLE X.**
23 **NOTICE**
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25 A Member who becomes aware of a claim or suit that in anyway, directly or indirectly,
26 contingently or otherwise, affects or might affect other Members of this Agreement shall provide
27 prompt and timely notice to the Members who may be affected by the suit or claim. Each
28 Member reserves the right to participate in the defense of such claims or suits as necessary to
29 protect its own interests.
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32 **ARTICLE XI.**
33 **INSURANCE**
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35 Each Participating Utility shall bear the risk of its own actions, as it does with its day-to-day
36 operations, and determine for itself what kinds of insurance, and in what amounts, it should
37 carry. Members of this Agreement shall maintain an insurance policy or maintain a self
38 insurance program that covers activities that it may undertake by virtue of membership in the
39 Mutual Aid and Assistance Program. Nothing herein shall act or be construed as a waiver of
40 any sovereign immunity or other exemption or limitation on liability that a Participating Utility
41 may enjoy.
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45 **ARTICLE XII.**
46 **CONFIDENTIAL INFORMATION**
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48 To the extent provided by law, any Member or Associate Member shall maintain in the strictest
49 confidence and shall take all reasonable steps necessary to prevent the disclosure of any
50 Confidential Information disclosed under this Agreement. If any Member, Associate Member,
51 third party or other entity requests or demands, by subpoena or otherwise, that a Member or

1 Associate Member disclose any Confidential Information disclosed under this Agreement, the
2 Member or Associate Member shall immediately notify the owner of the Confidential Information
3 and shall take all reasonable steps necessary to prevent the disclosure of any Confidential
4 Information by asserting all applicable rights and privileges with respect to such information and
5 shall cooperate fully in any judicial or administrative proceeding relating thereto.
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8 **ARTICLE XIII.**
9 **EFFECTIVE DATE**

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11 This Agreement shall be effective after the Water and Wastewater Utility's authorized
12 representative executes the Agreement and the Steering Committee receives the Agreement.
13 The Steering Committee shall maintain a master list of all members of the Mutual Aid and
14 Assistance Program.
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17 **ARTICLE XIV.**
18 **WITHDRAWAL**

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20 A Member may withdraw from this Agreement by providing written notice of its intent to
21 withdraw to the Statewide Chair. Withdrawal takes effect 30 days after the Statewide Chair
22 receives notice. Withdrawal from this Agreement shall in no way affect a Requesting Member's
23 duty to reimburse a Responding Member for cost incurred during a Period of Assistance, which
24 duty shall survive such withdrawal.
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27 **ARTICLE XV.**
28 **MODIFICATION**

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30 No provision of this Agreement may be modified, altered or rescinded by individual parties to the
31 Agreement. Modifications to this Agreement may be due to programmatic operational changes
32 to support the agreement, legislative action, creation of an interstate aid and assistance
33 agreement, or other developments. Modifications require a simple majority vote of Members.
34 The Steering Committee must provide written notice to all Members of approved modifications
35 to this Agreement. Approved modifications take effect 60 days after the date upon which notice
36 is sent to the Members.
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40 **ARTICLE XVI.**
41 **SEVERABILITY**

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43 The parties agree that if any term or provision of this Agreement is declared by a court of
44 competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms
45 and provisions shall not be affected, and the rights and obligations of the parties shall be
46 construed and enforced as if the Agreement did not contain the particular term or provision held
47 to be invalid.
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ARTICLE XVII.
PRIOR AGREEMENTS

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

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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.

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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.

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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

1 Alaska Water / Wastewater Response Network (AKWARN) by executing this Agreement on this
2 _____ day of _____ 2009.

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5 Water/Wastewater Utility: _____

6
7
8 By: _____

By: _____

9
10 Title: _____

Title _____

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12 _____
13 Please Print Name

Please Print Name

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16 Approved as to form and legality

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19 By: _____

Attorney for Utility

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22 _____
23 Please Print Name
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