

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

3
4 **AGREEMENT**

5
6 This Agreement is made and entered into by public and private Water and Wastewater Utilities
7 that have, by executing this Agreement, manifested their intent to participate in an Intrastate
8 Program for Mutual Aid and Assistance through the Maine Water/Wastewater Agency
9 Response Network (MEWARN).
10

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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 Members hereby establish a
17 Maine Program for Mutual Aid and Assistance. Through the Mutual Aid and Assistance
18 Program, Members may, at their discretion, coordinate response activities and share resources
19 during emergencies. This Agreement sets forth the procedures and standards for the
20 administration of the Maine 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.
31
- 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, drought,
35 earthquake, volcanic activity, spills or releases of oil or hazardous material, contamination,
36 utility or transportation emergencies, disease, blight, infestation, civil disturbance, riot,
37 intentional acts, sabotage and war that is, or could reasonably be beyond the capability of
38 the services, personnel, equipment, and facilities of a Member to fully manage and mitigate
39 internally.
40
- 41 C. Members – Any public or private Water or Wastewater Utility that manifests intent to
42 participate in the Mutual Aid and Assistance Program by executing this Agreement.
43
- 44 1. Associate Member – Any non utility participant, approved by the State Steering
45 Committee (the Committee), that provides a support role for the MEWARN program, for
46 example the Maine Emergency Management Agency, or associations who are members
47 of the Committee. Associate Members are not eligible to sign the MEWARN agreement
48 nor are they eligible to vote.
49
- 50 2. Requesting Member – A Member who requests aid or assistance under the Maine
51 Mutual Aid and Assistance Program.

1
2 3. Responding Member – A Member that responds to a request for aid or assistance under
3 the Maine Mutual Aid and Assistance Program.
4

5 D. Non-Responding Member - A Member or Associate Member that does not provide aid or
6 assistance during a Period of Assistance under the Maine Mutual Aid and Assistance
7 Program.
8

9 E. Period of Assistance – A specified period of time when a Responding Member assists a
10 Requesting Member. The period commences when personnel, equipment, or supplies
11 depart from Responding Member's facility and ends when the resources return to their
12 facility (portal to portal). All protections identified in the agreement apply during this period.
13 The specified Period of Assistance may occur during response to or recovery from an
14 emergency, as previously defined.
15

16 F. National Incident Management System (NIMS): A national, standardized approach to
17 incident management and response that sets uniform processes and procedures for
18 emergency response operations.
19

20 G. Incident Command System (ICS): The nationally-used, standardized on-scene emergency
21 management concept specifically designed to allow users to adopt an integrated
22 organizational structure equal to the complexity and demands of single or multiple incidents
23 without being hindered by jurisdictional boundaries.
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26 **ARTICLE III.**
27 **ADMINISTRATION**
28

29 The Mutual Aid and Assistance Program shall be administered through a Statewide Steering
30 Committee (the Committee). In addition to representing the interests of the Members, the
31 Committee may include representatives from government agencies, industry associations and
32 related organizations. Under the leadership of the Chair, the Committee members shall plan
33 and coordinate emergency planning and response activities for the Mutual Aid and Assistance
34 Program.
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37 **ARTICLE IV.**
38 **PROCEDURES**
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40 In coordination with the Committee, emergency management and public health system of the
41 state, the Committee shall develop operational and planning procedures for the Maine Mutual
42 Aid and Assistance Program. These procedures shall be reviewed at least annually and
43 updated as needed by the Committee.
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46 **ARTICLE V.**
47 **REQUESTS FOR ASSISTANCE**
48

49 A. Member Responsibility: Members shall identify an Authorized Official and alternates;
50 provide contact information including 24-hour access and maintain resource information that
51 may be available from the utility for mutual aid and assistance response. Such contact

1 information shall be updated annually or when changes occur and provided to the
2 Committee.

3
4 In the event of an Emergency, a Member's Authorized Official may request mutual aid and
5 assistance from a participating Member. Requests for assistance can be made orally or in
6 writing. When made orally, the request for personnel, equipment, and supplies shall be
7 prepared in writing as soon as practicable. Requests for assistance shall be directed to the
8 Authorized Official of the participating Member. Specific protocols for requesting aid shall
9 be provided in the required procedures (Article IV) as amended from time to time.

- 10
11 B. Response to a Request for Assistance – Members of the agreement are not obligated to
12 respond to a request. After a Member receives a request for assistance, the Authorized
13 Official evaluates whether or not to respond, whether resources are available to respond, or
14 if other circumstances would hinder response. Following the evaluation, the Authorized
15 Official shall inform, as soon as possible, the Requesting Member whether it will respond. If
16 the Member is willing and able to provide assistance, in its sole discretion, the Member shall
17 inform the Requesting Member about the type of available resources and the approximate
18 arrival time of such assistance.
- 19
20 C. Discretion of Responding Member's Authorized Official – Execution of this Agreement does
21 not create any duty to respond to a request for assistance. When a Member receives a
22 request for assistance, the Authorized Official shall have sole and absolute discretion as to
23 whether or not to respond, and the availability of resources to be used in such response. An
24 Authorized Member's decisions on the availability of resources shall be final.

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27 **ARTICLE VI.**
28 **RESPONDING MEMBER PERSONNEL**

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30 A. National Incident Management System - When providing assistance under this Agreement,
31 the Requesting Member and Responding Member shall use the organizational principals set
32 forth in the National Incident Management System
- 33
34 B. Control - The Requesting Member's Authorized Official shall coordinate response activities
35 with the designated supervisor(s) of the Responding Member(s), consistent with the NIMS
36 Incident Command System (ICS), to address the needs identified by the Requesting
37 Member. The personnel of the Responding Member shall be under the supervision of the
38 Responding Member. The Responding Member's designated supervisor(s) must keep
39 accurate records of work performed by personnel during the specified Period of Assistance.
- 40
41 C. Food and Shelter – Whenever practical, Responding Member personnel must be self
42 sufficient for up to 72 hours. When possible, the Requesting Member shall supply
43 reasonable food and shelter for Responding Member personnel. If the Requesting Member
44 is unable to provide food and shelter for Responding personnel, the Responding Member's
45 designated supervisor is authorized to secure the resources necessary to meet the needs of
46 its personnel. Except as provided below, the cost for such resources must not exceed the
47 State per diem rates for that area. To the extent Food and Shelter costs exceed the State
48 per diem rates for the area; the Responding Member must demonstrate that the additional
49 costs were reasonable and necessary under the circumstances. Unless otherwise agreed
50 to in writing, the Requesting Member remains responsible for reimbursing the Responding
51 Member for all reasonable and necessary costs associated with providing food and shelter,

1 if such resources are not provided. Current State of Maine per diem rates are available at:
2 http://www.gsa.gov/Portal/gsa/ep/contentView.do?queryYear=2009&contentType=GSA_BA
3 [SIC&contentId=17943&queryState=Maine&noc=T.](http://www.gsa.gov/Portal/gsa/ep/contentView.do?queryYear=2009&contentType=GSA_BA)
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- 5 D. Communication – The Requesting Member shall provide Responding Member personnel
6 with appropriate communications devices and procedures, as available.;
- 7
- 8 E. Status - Unless otherwise provided by law, the Responding Member’s officers and
9 employees and the Requesting Member’s officers and employees retain the same
10 privileges, immunities, rights, duties and benefits as provided in their respective jurisdictions.
11
- 12 F. Licenses and Permits – To the extent permitted by law, Responding Member personnel that
13 hold licenses, certificates, or permits evidencing professional, mechanical, or other skills
14 shall be allowed to carry out activities and tasks relevant and related to their respective
15 credentials during the specified Period of Assistance.
16
- 17 G. Right to Withdraw - The Responding Member’s Authorized Official retains the right to
18 withdraw some or all of its resources at any time for any reason in the Responding
19 Member’s sole and absolute discretion. Notice of intention to withdraw must be
20 communicated to the Requesting Member’s Authorized Official as soon as practicable under
21 the circumstances.
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25 **ARTICLE VII.**
26 **COST- REIMBURSEMENT**
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28 The Requesting Member shall reimburse the Responding Member for each of the following
29 categories of costs incurred during the specified Period of Assistance as agreed in whole or in
30 part by both parties; provided, that any Responding Member may assume in whole or in part
31 such loss, damage, expense, or other cost, or may loan such equipment or donate such
32 services to the Requesting Member without charge or cost.
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- 35 A. Personnel – The Responding Member shall be reimbursed by the Requesting Member for
36 personnel costs incurred for work performed during the specified Period of Assistance.
37 Responding Member personnel costs shall be calculated according to the terms provided in
38 their employment contracts or other conditions of employment. The Responding Member’s
39 designated supervisor(s) must keep accurate records of work performed by personnel
40 during the specified Period of Assistance. The Responding Member may seek
41 reimbursement from the Requesting Member for all personnel costs, including salaries or
42 hourly wages, costs for fringe benefits, and indirect costs.
43

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, transportation, and
4 loading/unloading of loaned equipment. All equipment shall be returned to the Responding
5 Member in good working order as soon as is practicable and reasonable under the
6 circumstances. In the event loaned equipment is damaged while being dispatched to a
7 Requesting Member, or while used during a Period of Assistance, and such damage is not
8 due to negligence or intentional acts of the Responding Member, Requesting Member shall
9 reimburse the Responding Member for the reasonable cost of repairing such equipment. If
10 the damaged equipment cannot be repaired, then Requesting Member shall reimburse the
11 Responding Member for the reasonable cost of replacing such damaged equipment with
12 equipment that is of equivalent age, condition and of at least equal capability. If Responding
13 Member must lease a piece of equipment while its equipment is being repaired, Requesting
14 Member shall reimburse Responding Member for such rental costs.

15
16 As a minimum, rates for equipment use must be based on the Federal Emergency
17 Management Agency's (FEMA) Schedule of Equipment Rates. If a Responding Member
18 uses rates differ from those in the FEMA Schedule of Equipment Rates, the Responding
19 Member must provide such rates orally or in writing to the Requesting Member prior to
20 supplying the equipment. Mutual agreement on which rates are used must be reached in
21 writing prior to dispatch of the equipment. Reimbursement for equipment not referenced on
22 the FEMA Schedule of Equipment Rates must be developed based on actual recovery of
23 costs.

24
25 C. Materials and Supplies – The Requesting Member shall reimburse the Responding Member
26 in kind or at actual replacement cost, plus handling charges, for use of expendable or non-
27 returnable supplies. The Responding Member shall not charge direct fees or rental charges
28 to the Requesting Member for other supplies and reusable items that are returned to the
29 Responding Member in a clean, damage-free condition. Reusable supplies that are
30 returned to the Responding Member with damage shall be treated as expendable/non-
31 returnable supplies for purposes of cost reimbursement.

32
33 D. Payment Period – The Responding Member must provide an itemized bill to the Requesting
34 Member for all expenses incurred by the Responding Member while providing assistance
35 under this Agreement. The Responding Member must send the itemized bill not later than
36 (90) ninety days following the end of the Period of Assistance. The Responding Member
37 may request additional periods of time within which to submit the itemized bill, and
38 Requesting Member shall not unreasonably withhold consent to such request. The
39 Requesting Member must pay the bill in full on or before the forty-fifth (45th) day following
40 the billing date. The Requesting Member may request additional periods of time within
41 which to pay the itemized bill, and Responding Member shall not unreasonably withhold
42 consent to such request, provided, however, that all payment shall occur not later than one-
43 year after the date a final itemized bill is submitted to the Requesting Member.

44
45 E. Records - Each Responding Member and their duly authorized representatives shall have
46 access to a Requesting Member's ICS forms, books, documents, notes, reports, papers and
47 records which are directly pertinent to this Agreement for the purposes of reviewing the
48 accuracy of a cost bill or making a financial, maintenance or regulatory audit. Each
49 Requesting Member and their duly authorized representatives shall have access to a
50 Responding Member's books, documents, notes, reports, papers and records which are
51 directly pertinent to this Agreement for the purposes of reviewing the accuracy of a cost bill

1 or making a financial, maintenance or regulatory audit. Such records shall be maintained for
2 at least three (3) years or longer where required by law.
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5 **ARTICLE VIII.**
6 **DISPUTES**
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8 If any controversy or claim arises out of, or relates to, the execution of the Agreement, including,
9 but not limited to, alleged breach of the Agreement, the disputing Members shall first attempt to
10 resolve the dispute by negotiation, followed by mediation and finally shall be settled by
11 arbitration in accordance with the Rules of the American Arbitration Association. This
12 Agreement is made under and shall be construed and enforced in accordance with the laws of
13 the State of Maine. Any court of competent jurisdiction may enter the judgment rendered by the
14 arbitrators as final judgment that is binding on the parties.
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17 **ARTICLE IX.**
18 **INDEMNIFICATION**
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20 Each Member shall determine for itself what kinds of insurance, and in what amounts, it should
21 carry. With respect to Worker's Compensation coverage, each Member shall carry Worker's
22 Compensation insurance as required by law. Except as otherwise provided by law, nothing
23 herein shall act or be construed as a waiver of any sovereign immunity, insurance or other
24 exemption or limitation on liability or damages, that a Member may enjoy pursuant to the Maine
25 Tort Claims Act, 14 M.R.S.A. § 8101 et seq., or to the terms of any State or Federal law. The
26 Requesting Member agrees to indemnify and hold harmless the Responding Member and its
27 respective directors, employees and agents from and against any and all liabilities, damages,
28 injuries, costs, expenses and claims of any kind, including any claim by a third party and the
29 costs of defense and attorneys' fees, which may arise in the performance of this Agreement,
30 except for claims arising from the willful misconduct or gross negligence of the Responding
31 Party.
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33 Notwithstanding anything herein to the contrary, each party shall be solely responsible for any
34 Worker's Compensation claim which may arise from its own employees in the performance of
35 this Agreement.
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37 The obligations created by this Article IX during the term of this Agreement shall survive
38 termination of this Agreement.
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41 **ARTICLE X.**
42 **SIGNATORY INDEMNIFICATION**
43 **(DELETED)**
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46 **ARTICLE XI.**
47 **WORKER'S COMPENSATION CLAIMS**
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49 The Responding Member is responsible for providing worker's compensation benefits and
50 administering worker's compensation for its employees. The Requesting Member is responsible

1 for providing worker's compensation benefits and administering worker's compensation for its
2 employees.

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5 **ARTICLE XII.**
6 **NOTICE**
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8 A Member who becomes aware of a claim or suit that in anyway, directly or indirectly,
9 contingently or otherwise, affects or might affect other Members of this Agreement shall provide
10 prompt and timely notice to the Members who may be affected by the suit or claim. Each
11 Member reserves the right to participate in the defense of such claims or suits as necessary to
12 protect its own interests.
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15 **ARTICLE XIII.**
16 **INSURANCE**
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18 Members of this Agreement and Associate Members shall maintain an insurance policy or
19 maintain a self insurance program that covers activities that it may undertake by virtue of
20 membership in the Mutual Aid and Assistance Program.
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23 **ARTICLE XIV.**
24 **CONFIDENTIAL INFORMATION**
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26 Confidential Information shall be defined and managed by current applicable Federal and State
27 laws and regulations. The obligations created by this Article XIV during the term of this
28 Agreement shall survive termination of this Agreement.
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31 **ARTICLE XV.**
32 **EFFECTIVE DATE**
33

34 This Agreement shall be effective after two or more Water or Wastewater Utilities' authorized
35 representatives execute the Agreement and the Committee Chair receives the Agreement. The
36 Committee Chair shall maintain a master list of all members of the Mutual Aid and Assistance
37 Program.
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40 **ARTICLE XVI.**
41 **WITHDRAWAL**
42

43 A Member may withdraw from this Agreement by providing written notice of its intent to
44 withdraw to the Committee Chair. Withdrawal takes effect 60 days after the Committee Chair
45 receives appropriate notice. Withdrawal from this Agreement shall in no way affect a
46 Requesting Member's duty to reimburse a Responding Member for cost incurred during a
47 Period of Assistance, which duty shall survive such withdrawal, or the responsibilities of any
48 remaining Members under the Agreement.
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1 **ARTICLE XVII.**
2 **MODIFICATION**

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4 No provision of this Agreement may be modified, altered or rescinded by individual Members to
5 the Agreement. Modifications to this Agreement may be required due to programmatic
6 operational changes to support the agreement, legislative action, creation of an interstate aid
7 and assistance agreement, or other developments. Any modifications require a simple majority
8 vote of Committee Members. The Committee Chair must provide written notice to all Members
9 of approved modifications to this Agreement. Approved modifications take effect 60 days after
10 the date upon which notice is sent to the Members.
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14 **ARTICLE XVIII.**
15 **SEVERABILITY**

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17 The parties agree that if any term or provision of this Agreement is declared by a court of
18 competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms
19 and provisions shall not be affected, and the rights and obligations of the parties shall be
20 construed and enforced as if the Agreement did not contain the particular term or provision held
21 to be invalid.
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24 **ARTICLE XIX.**
25 **PRIOR AGREEMENTS**

26
27 This Agreement supersedes all prior Agreements between Members to the extent that such
28 prior Agreements are inconsistent with this Agreement.
29

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31 **ARTICLE XX.**
32 **PROHIBITION ON THIRD PARTIES AND ASSIGNMENT OF RIGHTS/DUTIES**

33
34 This Agreement is for the sole benefit of the Members and no person or entity has any rights
35 under this Agreement as a third party beneficiary. Assignments of benefits and delegations of
36 duties created by this Agreement are prohibited and are without effect.
37

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39 **ARTICLE XXI.**
40 **MAINE AND INTERSTATE MUTUAL AID AND ASSISTANCE PROGRAMS**

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42 Members may voluntarily agree to participate in an Interstate Mutual Aid and Assistance
43 Program for water and wastewater utilities through this Agreement when such a Program is
44 established.
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Now, therefore, in consideration of the covenants and obligations set forth in this Agreement, the Water and/or Wastewater Utility listed here manifests its intent to be a Member of the Maine Mutual Aid and Assistance Program for Water and Wastewater Utilities by executing this Agreement on this _____ day of _____ 201_.

Water/Wastewater Utility: _____

By: _____

By: _____

Title: _____

Title _____

Please Print Name

Please Print Name