

*West Virginia Rural Water Association  
100 Young Street  
Scott Depot, WV 25560  
304-201-1689*



## **Commitment Letter**

This Commitment to participate in the West Virginia Rural Water Association (WVRWA) Emergency Response Team is made by (*WVRWA member*). By executing this Commitment Letter, (*WVRWA member*) manifests its intent to participate in a Regional Program as a Member of the WVRWA Emergency Response Team.

### **I. PURPOSE**

Recognizing that emergencies may require assistance in the form of personnel, equipment, and supplies from outside the area of impact, there is established by WVRWA an Emergency Response Program and Team. The intent of this Program is for Team members to provide and receive, as needed, mutual support during times of emergency.

### **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 WVRWA Emergency Response Program Member.

**B. Member**— Any WVRWA public water or wastewater utility member that manifests intent to participate in the WVRWA Emergency Response Program by executing a Commitment letter.

**C. Authorized Official**— An employee of a Member that is authorized by the Member’s governing board or management to request assistance or respond to assistance under this Commitment letter.

**D. Requesting Member** — A Member who requests assistance under the WVRWA Emergency Response Program.

**E. Responding Member** — A Member that responds to a request for assistance under the WVRWA Emergency Response Program.

**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 return to their facility (portal to portal). All protections identified in the commitment letter 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.

*Note on II.*

*Only the definition for emergency is noteworthy. This Commitment letter specifies a definition of an emergency that includes disasters that are “likely to be” beyond the control of the participating utility. The request for aid does NOT require a declaration of an emergency by the local or state agencies, and the aid may be provided during the emergency response or recovery phases.*

### **III ADMINISTRATION**

The WVRWA Emergency Response Program shall be administered through the WVRWA Emergency Response Committee, operating under the supervision of WVRWA Board of Directors. The purpose of the Committee is to provide local coordination of the WVRWA Emergency Response Program before, during, and after an emergency. Each of the WVRWA regions shall have an Emergency Response Team available to operate within the home region of the sponsoring utility. The designated regions are listed in Attachment “A”.

### **IV REQUESTS FOR ASSISTANCE**

Member Responsibility: Members shall identify an Authorized Official and alternates; Provide contact information including 24-hour access; and, Maintain with designated WVRWA Staff, resource information regarding equipment and personnel that may be made available by the utility for support of the WVRWA Emergency Response Program.

Request for Assistance: In the event of an emergency, a Member's Authorized Official may request assistance from the WVRWA Emergency Response Team. Requests for assistance can be made orally or in writing to the Executive Director of WVRWA or Chairman of the Emergency Response Committee. When made orally, the request for personnel, equipment shall be submitted in writing as soon as practicable.

Response to a Request for Assistance: After WVRWA receives a request for assistance, the Authorized Official of the Requesting Member and a WVRWA representative shall evaluate the nature of the emergency and whether appropriate resources are available to respond to the request. As soon as possible following this evaluation, the WVRWA representative shall contact the appropriate Emergency Response Team members, convey the needs of the requesting utility, and determine what resources are available to assist the requestor. The WVRWA representative shall then inform the Requesting Member of the resources available to respond to the emergency.

Planning the Response: WVRWA and the Requesting Member shall, following the determination of available resources, jointly plan the receipt of the Emergency Response Team in the emergency area. This plan shall include arrival time/place, reception activities, tasks to be accomplished, and arrangements for food, shelter and other support during the Period of Assistance. This plan shall be communicated by WVRWA to the Responding Members.

Directing the Response: Unless otherwise agreed, the Requestor shall be responsible for task assignments to the Emergency Response Team members. The Responding Members shall control the detailed completion of assigned work.

Discretion of Responding Member's Authorized Official: Execution of this Commitment letter does not create any duty to respond to a request for assistance. When WVRWA receives a request for assistance, it shall contact the Emergency Response Team Member with the specific support request. The Authorized Official receiving the request for assistance shall have absolute discretion regarding whether to respond to the request, and the nature of that response. An Authorized Member's decision regarding response to a request for assistance shall be final.

## V

### **RESPONDING MEMBER PERSONNEL**

National Incident Management System: When providing assistance under this Commitment Letter, the Requesting Utility and Responding Utility shall be organized and shall function under the National Incident Management System.

Control: Responding Member personnel shall remain under the direction and control of the Responding Member. The Requesting Member's Authorized Official and WVRWA shall coordinate response activities with the designated supervisor(s) of the Responding Member(s).

**\*\*Food and Shelter**: The Requesting Member shall arrange for and fund food and shelter for Responding Member personnel. If the Requesting Member is unable to provide funds for food and shelter, then the Requesting Member shall arrange for same and request financial support from WVRWA. Specific authority from WVRWA must be granted prior to committing WVRWA funds for food and shelter. The cost for such support shall not exceed the State established per diem rates for that area.

**\*\*Communication**: The Requesting Member or WVRWA shall provide Responding Member personnel with radio equipment, or radio frequency information to program existing radio, in order to facilitate appropriate communications with and among responders. The Requesting Member or WVRWA shall ensure that Responding Members have constant means to access emergency police and medical support during the duration of the Period of Assistance.

*Status*: Unless otherwise provided by law, the Responding Member's officers and employees shall be deemed agents of the Requesting Member, and thus have the same privileges, immunities, rights, duties, and benefits as provided to agents and employees of the Requesting Member.

*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.

*Right to Withdraw*: The Responding Member's Authorized Official retains the right to withdraw some or all of its resources at any time during the Period of Assistance. In order to promote continuity of operations, prior notice of intention to withdraw must be communicated as soon as possible to the WVRWA and/or the Requesting Member's Authorized Official.

## **VI**

### **COST REIMBURSEMENT**

**\*\*Unless reimbursing Federal or State funds are available (see below), the Requesting Member shall not be required to reimburse, and the Responding Member agrees not to seek reimbursement, for each of the following categories of costs incurred while providing aid and assistance during the specified Period of Assistance.**

**\*\*Personnel**: Responding Member personnel are to be paid by the Responding Member for work completed during a specified Period of Assistance according to the respective

and relevant terms and conditions of employment. The Responding Member designated supervisor(s) must keep accurate records of work performed by personnel during the specified Period of Assistance.

**\*\*Equipment:** The Requesting Member will not reimburse the Responding Member for the use of equipment, including equipment damage suffered, during a specified Period of Assistance. The Responding Member designated supervisor(s) must keep accurate records of equipment used during the specified Period of Assistance.

Materials and Supplies: The Requesting Member shall 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.

Payment Period: The Responding Member must provide an itemized bill to the Requesting Member and WVRWA for all reimbursable expenses incurred as a result of providing assistance under this Commitment letter. The Responding Member must send the itemized bill not 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.

Federal or State Assistance: If Federal (FEMA) and/or State funds are available to underwrite the cost of the emergency, the Responding Member is responsible to submit to the Requesting Member, WVRWA and the funding agency invoices for personnel and equipment costs incurred by the Responding Member. Regardless of available Federal or State assistance, the Requesting Member is and shall remain responsible for payment to the Requesting Member costs for materials and supplies (described above).

If Federal and/or State funds are available, the Requesting Member shall take all reasonable and necessary steps to assist the Responding Member in recovery of costs from the funding agencies.

## **VII** **DISPUTES**

Any controversy or claim arising out of, or relating to, this Commitment letter, including, but not limited to, alleged breach of the Commitment, shall be settled by mediation sponsored and conducted by WVRWA. Failing a mediated settlement, parties are free to

file a complaint with the West Virginia Public Service Commission and/or a Court of competent jurisdiction.

### **VIII**

#### **REQUESTING MEMBER'S DUTY TO INDEMNIFY**

The Requesting Member shall assume the defense of, fully indemnify and hold harmless, the Responding Member and WVRWA, and their respective officers and employees, from all claims, loss, damage, injury, and liability of every kind, nature, and description, directly or indirectly arising from work performed by Responding Member and/or WVRWA before and during a specified Period of Assistance. The scope of the Requesting Member's duty to indemnify includes, but is not limited to, suits arising from, or related to, negligent or wrongful use of equipment or supplies, faulty workmanship or other actual or alleged negligent acts, errors, or omissions by Responding Member and/or WVRWA personnel. The Requesting Member's duty to indemnify is subject to, and shall be applied consistent with, the conditions set forth in Article X, and shall survive the earlier termination of the Commitment.

### **IX**

#### **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 indemnify and hold harmless those Members whose involvement in the transaction or occurrence that is the subject of such claim, action, demand, or other proceeding is limited to execution of this Commitment Letter.

### **X**

#### **WORKER'S COMPENSATION CLAIMS**

The Responding Member is responsible for providing worker's compensation benefits, as required by law, for each and every employee responding during the Period of Assistance. All worker's compensation claims arising during the Period of Assistance shall be made to/through, administered by, and paid by the Responding Member. The Requesting Member shall not reimburse the Responding Member for any costs, benefits, and expenses associated with worker's compensation and other claims that arise from or are related to providing assistance under this Commitment.

## **XI** **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, shall provide prompt and timely notice to the WVRWA and 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.

## **XII** **INSURANCE**

Participating Members shall maintain a comprehensive general liability and commercial automobile insurance policies that include coverage for activities that it may undertake by virtue of membership in the WVRWA Emergency Response Program. The scope of the policies must include, at a minimum, state required limits and coverage for employee faulty workmanship and any other alleged or actual negligent or intentional acts causing harm.

## **XIII** **EFFECTIVE DATE**

This Commitment letter shall be effective after the duly authorized representative of the water and/or wastewater utility executes this Commitment Letter and the WVRWA receives it. The WVRWA shall maintain and publish a list of all Emergency Response Team Members in the respective regions and throughout the state.

## **XIV** **WITHDRAWAL**

A Member may withdraw from this Commitment Letter by providing written notice of its intent to with-draw to the WVRWA Executive Director or Chairman of the WVRWA Emergency response committee. Withdrawal takes effect 30 days after the appropriate officials receive notice.

## **XV** **MODIFICATION**

No provision of this Commitment may be modified, altered, or rescinded by individual parties to the Commitment letter. Modifications to this Commitment may be required due to programmatic operational changes to support the agreement. Modifications require a simple majority vote of the WVRWA Board of Directors. The Emergency Response Committee Chair must provide written notice to all Members of approved modifications

to this Commitment letter. Approved modifications take effect 30 days after the date upon which notice is sent to the Members.

**XVI**  
**PRIOR AGREEMENTS**

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

**XVII**  
**PROHIBITION ON THIRD PARTIES AND ASSIGNMENT OF RIGHTS/DUTIES**

This Commitment Letter is for the sole benefit of the Members and no person or entity shall acquire as a third party beneficiary, whether intended or unintended, any rights arising under this Commitment Letter. Assignments of benefits and delegations of duties created by this Commitment Letter are prohibited.

Now, therefore, this \_\_\_\_\_ day of \_\_\_\_\_, 2007, in consideration of the covenants, obligations, rights and duties set forth herein, the duly authorized representative of \_\_\_\_\_, by signature below, pledges that \_\_\_\_\_ is and shall be a Member of the Intrastate WVRWA Emergency Response Team for Water and Wastewater Utilities.

WVRWA Member Water/Wastewater Utility:

By:

Title:

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

Attest:

By:

Title:

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

