

New Hampshire Public Works Mutual Aid Program Mutual Aid and Assistance Agreement

This Agreement is entered into by each of the entities that executes and adopts the understandings, commitments, terms, and conditions contained herein:

WHEREAS, the State of New Hampshire is geographically vulnerable to a variety of natural and technological disasters; and

WHEREAS, Chapter 53-A of the New Hampshire Revised Statutes Annotated, permits municipalities to make the most efficient use of their powers by enabling them to cooperate with other municipalities on a basis of mutual cooperation and recognizing this vulnerability and providing that this Agreement's intended purposes are to:

- (1) Reduce vulnerability of people and property of this State to damage, injury, and loss of life and property;
- (2) Prepare for prompt and efficient rescue, care, and treatment of threatened or affected persons;
- (3) Provide for the rapid and orderly rehabilitation of persons and restoration of property; and
- (4) Provide for cooperation and coordination of activities relating to emergency and disaster mitigation, preparedness, response, and recovery; and

WHEREAS, in addition to the State, the Federal Emergency Management Agency (FEMA) has recognized the importance of the concept of coordination between the State and local governments; and

WHEREAS, under Chapter 53-A and other chapters of the New Hampshire Revised Statutes Annotated, entities entering into mutual aid and assistance agreements may include provisions for the furnishing and exchanging of supplies, equipment, facilities, personnel, and services; and

WHEREAS, the entities which have chosen to become signatories to this Agreement wish to provide mutual aid and assistance among one another at the appropriate times.

THEREFORE, pursuant to RSA 53-A:3, I, these entities agree to enter into this Agreement for reciprocal emergency management aid and assistance, with this Agreement embodying the understandings, commitments, terms, and conditions for said aid and assistance, as follows:

SECTION I: DEFINITIONS

The following definitions will apply to the terms appearing in this Agreement.

- A. "*Agreement*" means this document, the New Hampshire Public Works Mutual Aid Program Agreement.
- B. "*Aid and assistance*" includes personnel, equipment, facilities, services, supplies, and other resources.
- C. "*Authorized Representative*" means a party's employee who has been authorized, in writing by that party, to request, to offer, or to otherwise provide assistance under the terms of this Agreement. The list of Authorized Representatives for each party executing this Agreement shall be attached to the executed copy of this Agreement. (In the event of a change in personnel, unless otherwise notified, the presumption will be that the successor to that position will be the authorized representative.)

D. "*Disaster*" means a calamitous event threatening loss of life or significant loss or damage to property, such as a flood, hurricane, tornado, dam break, or other naturally-occurring catastrophe or man-made accidental, military, or paramilitary cause.

E. "*Mutual Aid Resource List*" means the list of Providers, equipment, and personnel maintained by the UNH Technology Transfer Center.

F. "*Party*" means a governmental entity which has adopted and executed this Agreement.

G. "*Provider*" means the party which has received a request to furnish aid and assistance from another party in need (the "*Recipient*"). In the absence of any local governing body designation, the Provider shall be represented by the local agency charged with recovery and repair activities including, but not limited to, opening of public ways; removal of debris; building of protective barriers; management of physical damage to structures and terrain; transportation of persons, supplies, and equipment; and repair and operation of municipal utilities.

H. "*Recipient*" means the party setting forth a request for aid and assistance to another party (the "*Provider*"). In the absence of any local governing body designation, the Provider shall be represented by the local agency charged with recovery and repair activities including, but not limited to, opening of public ways; removal of debris; building of protective barriers; management of physical damage to structures and terrain; transportation of persons, supplies, and equipment; and repair and operation of municipal utilities.

**SECTION II: INITIAL RECOGNITION OF PRINCIPLE BY ALL PARTIES;
AGREEMENT PROVIDES NO RIGHT OF ACTION FOR THIRD PARTIES**

- A. As this is a reciprocal contract, it is recognized that any party to this Agreement may be requested by another party to be a Provider. It is mutually understood that each party's foremost responsibility is to its own citizens. The provisions of this Agreement shall not be construed to impose an unconditional obligation on any party to this Agreement to provide aid and assistance pursuant to a request from another party. Accordingly, when aid and assistance have been requested, a party may in good faith withhold the resources necessary to provide reasonable and adequate protection for its own community, by deeming itself unavailable to respond and so informing the party setting forth the request.
- B. Given the finite resources of any jurisdiction and the potential for each party to be unavailable for aid and assistance at a given point in time, the parties mutually encourage each other to enlist other entities in mutual aid and assistance efforts and to enter into such agreements accordingly. Concomitantly, the parties fully recognize that there is a highly meritorious reason for entering into this Agreement, and accordingly shall attempt to render assistance in accordance with the terms of this Agreement to the fullest extent possible.
- C. Pursuant to RSA 53-A and as elaborated upon in Section XI of this Agreement, all functions and activities performed under this Agreement are hereby declared to be governmental functions. Functions and activities performed under this Agreement are carried out for the benefit of the general public and not for the benefit of any specific individual or individuals. Accordingly, this Agreement shall not be construed as or deemed to be an agreement for the benefit of any third parties or persons and no third parties or persons shall have any right of action under this Agreement for any cause whatsoever. All immunities provided by law shall be fully applicable as elaborated upon in Section XI of this Agreement.

SECTION III: GOVERNING BOARD; POWERS

A. The New Hampshire Public Works Mutual Aid Program shall be governed by a Board of Directors composed as follows:

- (1) Four (4) members who shall be members of and appointed by the New Hampshire Road Agents Association;
- (2) Two (2) members who shall be members of and appointed by the New Hampshire Public Works and Municipal Engineers Association;
- (3) One (1) member who shall be members of and appointed by the New Hampshire Municipal Management Association;
- (4) One (1) member of who shall be members of and appointed by the New Hampshire Building Official's Association;
- (5) One (1) member who shall be members of and appointed by the New Hampshire Association of Fire Chiefs, *ex. officio*;
- (6) One (1) member who shall be members of and appointed by the New Hampshire Association of Chiefs of Police, *ex. officio*;
- (7) The Commissioner of the Department of Transportation or a designee, *ex. officio*;
- (8) The Director of the New Hampshire Office of Emergency Management or a designee, *ex. officio*;
- (9) The Director of the University of New Hampshire Technology Transfer Center or a designee, *ex. officio*; and
- (10) The Executive Director of the Local Government Center or a designee, *ex. officio*.

B. *Ex-officio* members shall be non-voting members and shall not be counted for a quorum. Three voting members appointed and qualified shall constitute a quorum for the transaction of any business and a majority vote of these present and voting at any meeting shall be required for any action. The meeting must be duly warned.

C. The fiscal and business year of the New Hampshire Public Works Mutual Aid Program shall be from January 1 to December 31 of each year. The Board of Directors shall meet at least one time each year in June. The Board of Directors shall elect a Chair and a Vice Chair. The Chair and Vice Chair shall serve in their respective positions for a period of two years, provided that either may resign or be removed by the Board of Directors with or without cause. The Chair shall preside at all meetings of the Board of Directors and shall have such other duties as the Board may assign. In the absence of the Chair, the Vice Chair shall perform the duties of and have the authority of the Chair. The Vice Chair shall also have such other duties as the Board may assign. It is expected that all Directors shall use their best efforts to attend all Board meetings. If a vacancy is created by the removal or resignation of a Director or for any other reason, the entity identified in Section III A as being responsible for appointing the former Director shall promptly appoint a replacement Director to serve the remainder of the former Director's term.

D. The Board of Directors shall have the authority to elect a Treasurer and a Secretary. The Treasurer and Secretary shall serve in their respective positions for a period of two years, provided that either may resign or be removed by the Board of Directors with or without cause. The Treasurer shall: (a) have charge and custody of and be responsible for all funds and securities of the New Hampshire Public Works Mutual Aid Program; (b) receive and give receipts for moneys due and payable to the New Hampshire Public Works Mutual Aid Program from any source whatsoever, and deposit all such moneys in the name of the New Hampshire Public Works Mutual Aid Program in such banks, trust companies, or other depositories as shall be selected by the Board of Directors; and (c) in general perform all of the duties incident to those set forth in this Section III. D. and such other duties as from time to time may be assigned to the Treasurer by the Board of Directors. The Secretary shall: (a) keep the minutes of the proceedings of the Board of Directors in one or more books provided for that purpose; (b) be the custodian of the records of the New Hampshire Public Works Mutual Aid

Program, or make adequate provision for alternative custody arrangements; (c) when requested or required, authenticate any records of the New Hampshire Public Works Mutual Aid Program; and (d) in general perform all of the duties incident to those set forth in this Section III. D. and such other duties as from time to time may be assigned to the Secretary by the Board of Directors.

E. The term of office of voting members shall be three (3) years or until their successor is appointed and qualified. The initial terms of office shall be staggered as follows:

- (1) The four Category (1) members shall hold initial terms of one (1) year; two (2) years; and two (2) for three (3) years;
- (2) The two Category (2) members shall hold initial terms of one (1) year and two (2) years.
- (3) The Category (3) member shall hold an initial term of one (1) year.
- (4) The Category (4) member shall hold an initial term of two (2) years.
- (5) The Category (5) member shall hold an initial term of three (3) years.

F. In addition to any other authority provided in this Agreement, the New Hampshire Public Works Mutual Aid Program Board of Directors shall have the authority to:

- (1) Enter into any necessary agreements on behalf of the participating units of government in furtherance of this Mutual Aid Agreement, subject to any necessary ratification by the participating units;
- (2) Adopt an annual budget and establish an annual fee for participating in the New Hampshire Public Works Mutual Aid Program;
- (3) Propose modifications to the mutual aid agreement for ratification by participating units of government;
- (4) Promulgate reasonable rules to govern the New Hampshire Public Works Mutual Aid Program; and
- (5) Perform any other function and undertake any other activity reasonably necessary to carry out the purpose of this agreement unless said function or activity is subsequently disavowed by a majority vote of the governing bodies of the participating municipal government units.

SECTION IV: PROCEDURES FOR REQUESTING ASSISTANCE

Mutual aid and assistance shall not be requested unless the resources available within the stricken area are deemed inadequate by Recipient. When Recipient becomes affected by a disaster and deems its resources inadequate to rectify the given situation, it may request mutual aid and assistance by communicating the request directly to one or more Providers on the Mutual Aid Resource List, indicating the request is made pursuant to this mutual aid agreement. The request shall be followed as soon as practicable by a written confirmation of that request. All requests for mutual aid and assistance shall be transmitted as set forth below.

A. *METHOD OF REQUEST FOR MUTUAL AID AND ASSISTANCE*: Recipient shall directly contact Provider's authorized representative, setting forth the information in paragraph B of this Section (Section IV). All communications shall be conducted directly between Recipient and Provider. Recipient shall be responsible for the costs and expenses incurred by any Provider in providing aid and assistance pursuant to the provisions of this Agreement as noted in Section VIII of this Agreement.

B. *REQUIRED INFORMATION*: Each request for assistance shall be accompanied by the following information, in writing or by any other available means, to the extent known:

- (1) Stricken Area and Status: A general description summarizing the condition of the community (i.e., whether the disaster is imminent, in progress, or has already occurred) and of the damage sustained to date;

- (2) Services: Identification of the service function(s) for which assistance is needed and the particular type of assistance needed;
- (3) Infrastructure Systems: Identification of the type(s) of public infrastructure system for which assistance is needed (water/sewer, storm water systems, streets) and the type of work assistance needed;
- (4) Aid and Assistance: The amount and type of personnel, equipment, materials, and supplies needed and a reasonable estimate of the length of time they will be needed;
- (5) Facilities: The need for sites, structures, or buildings outside Recipient's geographical limits to serve as relief centers or staging areas for incoming emergency goods and services; and
- (6) Meeting Time and Place: An estimated time and a specific place for a representative of Recipient to meet the personnel and resources of any Provider.

C. STATE AND FEDERAL ASSISTANCE: If the severity of the emergency is expected to exhaust the reasonably available resources on the Mutual Aid Resource List, then the Recipient shall be responsible for notifying the appropriate state agencies or coordinating requests for state and/or federal assistance.

SECTION V: PROVIDER'S ASSESSMENT OF AVAILABILITY OF RESOURCES AND ABILITY TO RENDER ASSISTANCE

When contacted by a Recipient in need, Provider's authorized representative shall assess Provider's own local situation in order to determine available personnel, equipment, and other resources. If Provider's authorized representative determines that Provider has available resources, Provider's authorized representative shall so notify the Recipient. Provider shall complete a written acknowledgment regarding the assistance to be rendered (or a rejection of the request) and shall transmit it by the most efficient practical means to the Recipient for a final response. Provider's acknowledgment shall contain the following information:

- (1) In response to the items contained in the request, an acknowledgment of the personnel, equipment, and other resources to be sent;
- (2) The projected length of time such personnel, equipment, and other resources will be available to serve Recipient, particularly if the period is projected to be shorter than one week (as provided in the "Length of Time for Aid and Assistance" section [Section VII] of this Agreement.)
- (3) The estimated time when the assistance provided will arrive at the location designated by the Authorized Representative of the Recipient; and
- (4) The name of the person(s) to be designated as Provider's supervisory personnel (pursuant to the "Supervision and Control" section [Section VI] of this Agreement).

SECTION VI: SUPERVISION AND CONTROL

A. Provider shall designate supervisory personnel among any employees sent to render aid and assistance to Recipient. As soon as practicable, Recipient shall assign work tasks to Provider's supervisory personnel, and unless specifically instructed otherwise, Recipient shall have the responsibility for coordinating communications between Provider's supervisory personnel and Recipient.

Based upon such assignments set forth by Recipient, Provider's supervisory personnel shall:

- (1) have the authority to assign work and establish work schedules for Provider's personnel. Further, direct supervision and control of Provider's personnel, equipment, and other resources shall remain with Provider's supervisory personnel. Provider should be prepared to furnish communications equipment sufficient to maintain communications among its respective operating units, and if this is not possible, Provider shall notify Recipient accordingly;
- (2) maintain daily personnel time records, material records, a log of equipment hours, and other expenses;

(3) shall report work progress to Recipient at mutually agreed upon intervals.

SECTION VII: LENGTH OF TIME FOR AID AND ASSISTANCE; RENEWABILITY; RECALL

- A. Unless otherwise provided, the duration of Provider's assistance shall be presumed to be for an initial period of twenty-four (24) hours, starting from the time of arrival. Thereafter, assistance may be extended as the situation warrants for periods agreed upon by the authorized representatives of Provider and Recipient.
- B. As noted in Section II of this Agreement, Provider's personnel, equipment, and other resources shall remain subject to recall by Provider to provide for its own citizens if circumstances so warrant. Provider shall make a good faith effort to provide at least twenty-four (24) hours advance notification to Recipient of its (Provider's) intent to terminate portions or all assistance, unless such notice is not practicable, in which case as much notice as is reasonable under the circumstances shall be provided.

SECTION VIII: COST DOCUMENTATION

A. *Personnel* – Provider shall continue to pay its employees according to its then prevailing ordinances, rules, regulations, and collective bargaining agreements. At the conclusion of the period of assistance, the Provider shall document all direct and indirect payroll costs plus any taxes and employee benefits which are measured as a function of payroll (i.e.; FICA, unemployment, retirement, etc.).

B. *Provider's Traveling Employee Needs* – Provider shall document the basic needs of Provider's traveling employees, such as reasonable out-of-pocket costs and expenses of Provider's personnel, including without limitation to transportation expenses for travel to and from the stricken area, shelter, and subsistence.

C. *Equipment* – Provider shall document the use of its equipment during the period of assistance including all repairs to its equipment as determined necessary by its on-site supervisor(s) to maintain such equipment in safe and operational condition, fuels, miscellaneous supplies, and repairs directly caused by provision of the assistance.

D. *Materials And Supplies* – Provider shall document all materials and supplies furnished by it and used or damaged during the period of assistance.

SECTION IX: RIGHTS AND PRIVILEGES OF PROVIDER'S EMPLOYEES

Whenever Provider's employees are rendering aid and assistance pursuant to this Agreement, such employees shall retain the same powers, duties, immunities, and privileges they would ordinarily possess if performing their duties within the geographical limits of Provider.

SECTION X: PROVIDER'S EMPLOYEES COVERED AT ALL TIMES BY PROVIDER'S WORKERS' COMPENSATION POLICY

Recipient shall not be responsible for reimbursing any amounts paid or due as benefits to Provider's employees due to personal injury or death occurring during the period of time such employees are engaged in the rendering of aid and assistance under this Agreement. It is mutually understood that Recipient and Provider shall be responsible for payment of such workers' compensation benefits only to their own respective employees. Further, it is mutually understood that Provider will be entirely responsible for the payment of workers' compensation benefits to its own respective employees.

SECTION XI: IMMUNITY

Pursuant to RSA 53-A, all activities performed under this Agreement are hereby declared to be governmental functions and the liability of both Provider and Recipient shall be governed by NH Statutes, RSA 107-C:10.

SECTION XII: PARTIES MUTUALLY AGREE TO HOLD EACH OTHER HARMLESS

Each party (as indemnitor) agrees to protect, defend, indemnify, and hold the other party (as indemnitee), and its officers, employees, and agents, free and harmless from and against any and all losses, penalties, damages, assessments, costs, charges, professional fees, and other expenses or liabilities of every kind and arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind in connection with or arising out of indemnitor's negligent acts, errors and/or omissions. Indemnitor further agrees to investigate, handle, respond to, provide defense for, and defend any such claims, etc. at indemnitor's sole expense and agrees to bear all other costs and expenses related thereto. To the extent that immunity does not apply, each party 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. Each party understands and agrees that any insurance protection obtained shall in no way limit the responsibility to indemnify, keep, and save harmless the other parties to this Agreement.

SECTION XIII: ROLE OF THE LGC AND UNIVERSITY OF NH TECHNOLOGY TRANSFER CENTER

A. Under this Agreement, the responsibilities of the Local Government Center (LGC) are:

- (1) to serve as the fiscal agent of the Program for the invoicing and collection of any dues or fees, recipient for special grants or awards, and for the processing of all accounts receivable and payable;
- (2) to serve as the central depository for executed agreements; and
- (3) to provide administrative support to the Board of Directors.

B. Under this Agreement, the responsibilities of the University of New Hampshire Technology Transfer Center (UNH T²) are:

- (1) to maintain the Mutual Aid Resource List, and to provide this listing to each of the entities on an annual basis.
- (2) to train public works personnel and other local officials in the implementation of the NHPWMAP.

SECTION XIV: AMENDMENTS; ADDITIONAL MEMBERS

A. *Manner* – This Agreement may be modified at any time by (1) a proposal of the Board of Directors and upon the consent of a majority of the participating government units or (2) upon the mutual written consent of the Recipient and Provider.

B. *Addition of Other Entities* – Additional entities may become parties to this Agreement upon: (1) acceptance and execution of this Agreement; (2) sending said executed copy of the Agreement to the Local Government Center with payment of any dues or fees; and (3) completing and returning the Mutual Aid Resource List.

SECTION XV: INITIAL DURATION OF AGREEMENT; RENEWAL; TERMINATION

This Agreement shall be binding for not less than one (1) year from its effective date, unless terminated upon at least sixty (60) days advance written notice by a party as set forth below. Thereafter, this Agreement shall continue to be binding upon the parties in subsequent years, unless canceled by written notification served personally or by registered mail upon the Local Government Center, which shall provide notice to all other parties. The withdrawal shall not be effective until sixty (60) days after notice thereof has been sent to all other parties. A party's withdrawal from this Agreement shall not affect a party's liability or obligation under the terms of this Agreement incurred hereunder. Once the withdrawal is effective, the withdrawing entity shall no longer be a party to this Agreement, but this Agreement shall continue to exist among the remaining parties.

SECTION XVI: HEADINGS

The headings of various sections and subsections of this Agreement have been inserted for convenient reference only and shall not be construed as modifying, amending, or affecting in any way the express terms and provisions of this Agreement.

SECTION XVII: SEVERABILITY – EFFECT ON OTHER AGREEMENTS

Should any clause, sentence, provision, paragraph, or other part of this Agreement be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Agreement. Each of the parties declares that it would have entered into this Agreement irrespective of the fact that any one or more of this Agreement's clauses, sentences, provisions, paragraphs, or other parts have been so declared invalid. Accordingly, it is the intention of the parties that the remaining portions of this Agreement shall remain in full force and effect without regard to the clause(s), sentence(s), provision(s), paragraph(s), or other part(s) invalidated.

SECTION XVIII: EFFECTIVE DATE

This Agreement shall take effect upon its approval by the entity seeking to become a signatory to this Agreement and upon proper execution hereof.

IN WITNESS WHEREOF, each of the parties have caused this New Hampshire Public Works Mutual Aid Program Agreement to be duly executed in its name and behalf by its chief executive officer, who has signed accordingly with seals affixed and attested with concurrence of a majority of its governing board, as of the date set forth in this Agreement.

WITNESS:

BY: _____

Printed Name:

Title:

Municipal Government Unit:

Date:

DULY AUTHORIZED REPRESENTATIVE

Name: _____

Title: _____

Organization: _____

Address: _____

City/State/Zip: _____

Work Phone: _____

Cell/Emergency Phone: _____

Email: _____

Fax: _____

Pager: _____

Radio Frequency: _____