

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A MUTUAL AID AND ASSISTANCE AGREEMENT WITH OTHER MEMBERS OF THE ARKANSAS MUNICIPAL POWER ASSOCIATION FOR ASSISTANCE IN THE EVENT OF A DISASTER OR EMERGENCY SITUATION; AND FOR OTHER PURPOSES.**

WHEREAS, Ark. Code Ann. §§ 25-20-101 *et seq.* (“the Interlocal Cooperation Act”) provides for Interlocal Cooperation Agreements between various political subdivisions of the State of Arkansas; and

WHEREAS, Section 104(h) of the Interlocal Cooperation Act allows cities, counties, and other units of government, including municipal power providers, to enter into informal cooperative agreements to share resources without burdensome procedural requirements; and

WHEREAS, emergency events or disaster situations (i.e. severe weather storms) can occur, causing substantial damage and destruction and that is beyond the capability of the services, personnel, equipment and facilities of an affected municipal power provider; and

WHEREAS, recognizing that such emergency events or disasters may require assistance in the form of personnel, equipment and supplies from outside the area of impact, it is in the best interests of participating members of the Arkansas Municipal Power Association (“AMPA”) that a Mutual Aid and Assistance Agreement be entered into in order to coordinate response activities and share resources during such emergencies; and

WHEREAS, the City of North Little Rock previously entered into a Mutual Aid and Assistance Agreement (Resolution No. 8657) with other members of AMPA and would like to renew that agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: That the Mayor is hereby authorized to enter into a Mutual Aid and Assistance Agreement (substantially similar to Exhibit A attached hereto) on behalf of the City of North Little Rock for the purpose of coordinating activities and rendering assistance in the form of personnel, equipment and supplies during emergency events or disaster situations with following AMPA public power entities:

- |                                 |                            |
|---------------------------------|----------------------------|
| Benton Utilities                | City of Piggott, Arkansas  |
| Clarksville Connected Utilities | City of Prescott, Arkansas |
| City of Bentonville, Arkansas   | City of Siloam Springs     |
| City of Osceola, Arkansas       | Conway Corporation         |
| City of Paris, Arkansas         | Hope Light and Water       |

Jonesboro City Light and Water  
Paragould Light Water and Cable

West Memphis Utilities

SECTION 2: That this resolution shall be in full force and effect from and after its passage and approval.

PASSED:

APPROVED:

\_\_\_\_\_

\_\_\_\_\_

Mayor Joe A. Smith

SPONSOR:

ATTEST:

Joe A. Smith  
Mayor Joe A. Smith *hjo AF*

\_\_\_\_\_

Diane Whitbey, City Clerk

APPROVED AS TO FORM:

Amy Beckman Fields  
Amy Beckman Fields, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/cf

FILED	<u>11</u>	A.M.	_____	P.M.
By	<u>Amy Fields, CA</u>			
DATE	<u>5-7-19</u>			
<b>Diane Whitbey, City Clerk and Collector North Little Rock, Arkansas</b>				
RECEIVED BY	<u>[Signature]</u>			



**ARKANSAS MUNICIPAL POWER ASSOCIATION  
MUTUAL AID AND ASSISTANCE AGREEMENT**

(Version: March 2019)

This Agreement (“Agreement”) to be made effective the \_\_\_\_ Day of \_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_, a Public Power Entity of the State of Arkansas, and any other Public Power Entity that may subsequently become a party to this Agreement by executing and delivering an identical Agreement to the Arkansas Municipal Power Association (AMPA) Mutual Aid Coordinator, for the purposes stated herein. This Agreement, by its nature, is executed in counterparts, each of which is deemed as original but all constitute one and the same instrument.

*Recitals*

*WHEREAS*, local government entities in Arkansas are directed by A.C.A. § 12-75-121 to utilize the services, equipment, supplies, and facilities of existing departments, offices and agencies of the state and the political subdivisions of the state to the maximum extent possible when recovering from Emergencies; and

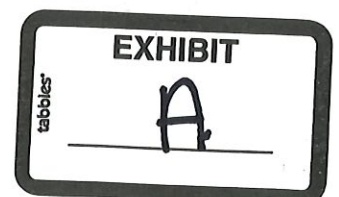
*WHEREAS*, the Members are desirous of entering into an Agreement providing for the terms of Mutual Aid and Assistance in order to adequately prepare and plan for Emergencies that may arise from time-to-time; and

*WHEREAS*, the Members are authorized by Arkansas law including, without limitation, the Arkansas Interlocal Cooperation Act found at A.C.A. § 25-20-101, et seq., to cooperate for their mutual benefit and thereby best meet the needs of their respective local communities.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained herein, the Members agree as follows:

**ARTICLE I  
PURPOSE**

Recognizing that Emergencies (as defined below) may require assistance in the form of personnel, equipment and supplies from outside the area of impact, the signatory utilities establish this Agreement for Mutual Aid and Assistance. Through the Mutual Aid and Assistance Agreement, Members intend to coordinate response activities and share resources during Emergencies. This Agreement sets forth the procedures and standards for the administration of the interagency Mutual Aid and Assistance Agreement.





## MUTUAL AID AND ASSISTANCE AGREEMENT

### **ARTICLE II** **DEFINITIONS**

In addition to the terms defined elsewhere herein, the following terms used in this Agreement have the following meanings, applicable to both the singular and plural forms of the terms defined.

1. *Authorized Official* means the elected official or employee of a Member who is authorized by the Member's governing board or management to execute this agreement. The Authorized Official may also be the Utility Executive.

2. *Contract Crews* means workers and/or groups of workers (including their tools, equipment and vehicles) who are:

- a. Not employees of any Member, but perform work under an independent contract with a Member;
- b. Released from existing contractual obligations to work for a Requesting Member; and
- c. Agree to work for a Requesting Member according to the terms of a new agreement.

3. *Emergency* means any tornado, storm, flood, high water, earthquake, drought, fire, radiological incident, air or surface-borne toxic or other hazardous material contamination, or other catastrophe, whether caused by natural forces, enemy attack, or any other means the response to which is, or is likely to be, beyond the capability of the services, personnel, equipment or facilities of a Member or such an event that due to the size or nature thereof is likely to result in significant delays in completion of the repairs necessary due to such Emergency.

4. *Member* means a Public Power Entity that has demonstrated its intention to participate in this Mutual Aid and Assistance Agreement by executing the same, until such time that the Agreement is terminated in accordance with Article X hereof. Membership in this Agreement does not convey, infer or imply membership in AMPA, nor does Membership in this Agreement require membership in AMPA.

5. *Mutual Aid and Assistance Policy* means a Responding Member's policy which, at a minimum, dictates pay rates, work hours and rest hours for the Responding Member's personnel during the Period of Assistance, as such policy may be amended, modified or replaced from time to time.

6. *Period of Assistance* means the specified period of time when a Responding Member assists a Requesting Member. The period commences when the Resources depart from a Responding



## MUTUAL AID AND ASSISTANCE AGREEMENT

Member's facility and ends when the Resources return to their facility (portal to portal) or when the Resources should have reasonably returned to their facility. All protections identified in the Agreement apply during this period. The specified Period of Assistance may occur during response to, recovery from or training for an Emergency, as previously defined.

7. *Public Power Entity* means the governing body of any electric generation, transmission, or distribution system owned or operated by any city of the first class, city of the second class, or a town incorporated under the laws of the State of Arkansas or any commission, department, division, or agency thereof, including any municipally owned or municipally controlled corporation, improvement district, consolidated public or municipal utility system improvement district, or nonprofit corporation lessee of such an entity.

8. *Requesting Member* means a Member who requests assistance under this Mutual Aid and Assistance Agreement.

9. *Responding Member* means a Member that responds to a request for assistance under the Mutual Aid and Assistance Agreement.

10. *Resources* means personnel, equipment, or supplies.

11. *Utility Executive* means a senior employee of a Member or his or her designee who has been properly designated and duly authorized to act on behalf of the Member in an Emergency or throughout a Period of Assistance. Utility Executives are required to have signatory authority to contract on behalf of the Member and authority to request assistance or offer assistance under this Agreement. A Utility Executive may also be the Authorized Official.

12. *Utility Coordinator* means an employee of the Member who the Utility Executive has empowered to act on behalf of the Member in an Emergency or during the Period of Assistance. The Utility Coordinator and his alternates, if any, shall be named on the Member's Resource list. The Utility Executive may also be the Utility Coordinator.

### **ARTICLE III** **PARTICIPATION REQUIREMENTS**

1. Members executing this Agreement shall comply with the requirements herein when requesting assistance, or responding to a request for assistance, from another Member. However, the execution of this Agreement shall not be interpreted to require any Member to request assistance, or respond to a request for assistance, from another Member.

2. Members executing this Agreement shall identify, designate and provide the following information to the AMPA Mutual Aid Coordinator:

- a. Authorized Official;



## MUTUAL AID AND ASSISTANCE AGREEMENT

- b. Utility Executive;
- c. Utility Coordinator;
- d. Emergency Contact Information (24-hours/day);
- e. Information about Resources; and
- f. Such other information as may reasonably support the AMPA Mutual Aid and Assistance program.

3. *Requesting Assistance.* A Member's Utility Coordinator may request Mutual Aid and Assistance from one or more other Member(s) orally, electronically (via email) or in writing. When made orally, the request shall be reduced to electronic or written form as soon as practical. Requests for assistance shall be directed to the Utility Coordinator of the participating Member and contain the following minimum information:

- a. Resources sought;
- b. Requested arrival date/time;
- c. Estimated duration;
- d. Coordinating instructions; and
- e. Such additional information as may be considered useful.

4. *Responding to a request for Assistance:* After a Member receives a request for assistance, the Member's Utility Coordinator shall determine whether the requested Resources, or any portion thereof, are available to assist as requested and inform the Requesting Member of the determination as soon as possible. If responding, the Member shall provide the Requesting Member the following information in written or electronic form:

- a. The type of available Resources;
- b. The approximate time that Resources will arrive;
- c. A copy of the Responding Member's Mutual Aid and Assistance Policy; and
- d. Such additional information as may be considered useful.

### **ARTICLE IV** **RESPONDING MEMBER PERSONNEL**

1. *Control.* Responding Member personnel shall remain under the direction and control of the Responding Member. The Requesting Member's Utility Coordinator or alternates shall coordinate response activities with the designated supervisor(s) of the Responding Member(s).



## MUTUAL AID AND ASSISTANCE AGREEMENT

The Responding Member's designated supervisor(s) shall be responsible for administering the Responding Member's Mutual Aid and Assistance Policy including work and rest hours during the response activities and coordinating with the Requesting Member. Contract Crews released by Responding Member to the Requesting Member will be under direct contract with the Requesting Member.

2. *Food, Shelter and Laundry.* The Requesting Member shall supply reasonable food, shelter and laundry service for Responding Member personnel. If the Requesting Member fails to provide reasonable food, shelter and laundry services for Responding Member personnel, the Responding Member's designated supervisor is authorized to secure the resources necessary to meet the needs of its personnel and the Requesting Member shall be responsible for reimbursing the Responding Member for all costs so incurred. However, only the reasonable cost of these expenses shall be paid by the Requesting Member.

3. *Communication.* The Requesting Member shall provide Responding Member personnel with radio equipment or personnel with radio equipment, or other suitable equipment or method to facilitate communication. If practical, radio frequency information may be provided to program existing radios in order to facilitate communications between the Requesting Member and its employees as well as the Responding Member and its employees.

4. *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.

5. *Standards, Policies and Procedures.* Responding Member personnel shall perform work within Requesting Member's jurisdiction in accordance with Requesting Member's standards of construction. Responding Member personnel shall perform work in a safe and good workmanship like manner and in accordance with applicable local, State and Federal rules, regulations and laws.

6. *Right to Withdraw.* The Responding Member's Utility Coordinator retains the right to withdraw some or all of its Resources at any time. Notice of intention to withdraw shall be communicated to the Requesting Member's Utility Coordinator in written or electronic form as soon as possible.

### **ARTICLE V** **COST REIMBURSEMENT**

Unless otherwise mutually agreed in whole or in part, a Requesting Member shall reimburse all Responding Members for all costs incurred while providing aid and assistance during the specified Period of Assistance according to the following categories:



## MUTUAL AID AND ASSISTANCE AGREEMENT

1. *Personnel.* A Requesting Member shall reimburse all labor costs of Responding Members incurred through the provision of assistance under this Agreement according to the same terms provided in such Responding Member's Mutual Aid and Assistance Policy. No Requesting Member shall be liable for any Responding Member's labor costs occurring before or after the Period of Assistance. The Responding Member's designated supervisor(s) must keep accurate records of work performed by their personnel during the specified Period of Assistance. The Requesting Member reserves the right to, at its discretion, review and approve work records kept by the Responding Member. Requesting Member reimbursement to the Responding Member shall include all personnel costs, including salaries or hourly wages, costs for fringe benefits, and indirect costs.

a. When a Requesting Member receives assistance from one or more Responding Members **and receives no out-of-state aid**, the Requesting Member will pay for labor costs at one and one half (1 ½) times the Responding Members normal rate of pay, including travel time (portal to portal) for a minimum of twelve (12) hours, with a maximum hours as allowed per the American Public Power Association, Safety Manual, 16th Edition (or latest revision).

b. When a Requesting Member receives assistance from one of more Responding Members **and also receives out-of-state aid**, the Requesting Member will pay for labor costs at two (2) times the Responding Members normal rate of pay, including travel time (portal to portal) for a minimum of sixteen (16) hours each day, with a maximum hours as allowed per the American Public Power Association, Safety Manual, 16th Edition (or latest revision).

2. *Equipment.* The Requesting Member shall reimburse the Responding Member for the use of equipment during the Period of Assistance. Reimbursement for equipment used shall be based on the Federal Emergency Management Agency's (FEMA) Schedule of Equipment Rates. Reimbursement for equipment not referenced on the FEMA Schedule of Equipment Rates will be developed based on Responding Member's actual recovery of costs using FEMA criteria to determine eligible costs or as agreed to by Members.

3. *Materials and Supplies.* The Requesting Member shall reimburse the Responding Member in kind or at actual replacement cost for expendable or non-returnable supplies used while providing assistance. The Responding Member shall not charge direct fees or rental charges to the Requesting Member for 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 in an unclean or damaged condition shall be treated as expendable supplies for purposes of cost reimbursement. However, the Requesting Member shall be entitled to retain the expendable supplies if the Requesting Member pays the full replacement cost of such item(s).





## MUTUAL AID AND ASSISTANCE AGREEMENT

4. *Tools and Chain Saw.* No charge will be made to Requesting Member for the use of tools and chain saws.
5. *Payment Period.* The Responding Member shall provide an itemized bill to the Requesting Member for all expenses it incurred as a result of providing assistance under this Agreement. 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 shall pay the bill in full on or before the ninetieth (90th) day following the billing date.

### **ARTICLE VI** **PREPARATION, EDUCATION AND TRAINING**

Members may participate in joint preparation, education or training events to prepare for Emergencies and other purposes as may be mutually beneficial to the Members. While these events may simulate a Request for Assistance, each participating Member will bear their own organizational costs, unless otherwise agreed. Shared costs will be distributed based upon each Member paying a proportion that is equal to the most recent annual peak of its system electric load (peak load) divided by the sum of all Members' peak loads participating in the preparation, education or training event, as customary within AMPA.

### **ARTICLE VII** **WORKER'S COMPENSATION CLAIMS**

The Responding Member is responsible for providing worker's compensation benefits and administering worker's compensation for its employees.

### **ARTICLE VIII** **INSURANCE**

Each Member shall bear the risk of its own actions, as it does with its day-to-day operations, and determine for itself if and what kinds of insurance, and in what amounts, it should carry.

### **ARTICLE IX** **INDEMNIFICATION**

A Requesting Member receiving Mutual Aid and Assistance pursuant to this Agreement hereby agrees, to the fullest extent permitted by law, to release, indemnify, defend and hold harmless the Responding Member, and its officers, agents and employees from and against any and all loss, liabilities, claims, damages, fines, penalties, clean-up costs and other pollution-related damages, and all costs, fees (including attorneys' fees) and expenses related thereto, resulting or arising (directly or indirectly) out of, or in any way connected with the provision of Mutual Aid and Assistance to said Requesting Member hereunder, including, without limitation, those resulting or arising (directly or indirectly) from the acts or omissions of the Responding



## MUTUAL AID AND ASSISTANCE AGREEMENT

Member or its officers, agents or employees, except those resulting solely from the willful acts or omissions of the Responding Member or its officers, agents or employees. This Agreement shall not be interpreted to constitute a waiver of immunity by any Requesting Member, any Responding Member, or any Member or group of Members whatsoever. The parties to this Agreement intend to preserve all immunities to the maximum extent allowed by law. Further, this Agreement shall not be construed to impose liability upon any Member based upon the existence or availability of insurance or other third-party indemnifier.

### **ARTICLE X** **TERM**

The term of this Agreement shall commence upon the execution and delivery of this Agreement to the Arkansas Municipal Power Association Mutual Aid Coordinator and shall continue until terminated by the Member at any time by giving the AMPA President thirty (30) days prior written notice of its desire to so terminate this Agreement. Termination of this Agreement shall not affect the Member's accrued obligations or liabilities under this Agreement, including without limitation, the obligation of a Requesting Member to pay amounts due hereunder. The AMPA Board of Directors may terminate this Agreement in whole or in part upon the vote of the Board at a regular or called business meeting.

### **ARTICLE XI** **COUNTERPARTS**

This Agreement may be executed in counterparts and each part will be deemed valid as if fully executed. An Agreement shall be deemed valid when a Member shall have executed and delivered to the Mutual Aid Coordinator an identical Agreement for Mutual Aid and Assistance. During the term of this Agreement, the Member shall be entitled to all the rights of a Member under this Agreement. The Member shall also be subject to all the provisions of, and liable for all obligations incurred by it as a Member under this Agreement and the termination hereof shall not affect any accrued obligation or liability of the Member hereunder.

### **ARTICLE XII** **MODIFICATIONS**

This Agreement shall only be amended, modified, or otherwise changed by: (1) prior written consent of all the Members, who at that time have not terminated their Agreements for Mutual Aid and Assistance, or given notice of the termination thereof, or (2) approved by three-fourths of the voting members at a regularly scheduled AMPA meeting. No modification shall take effect prior to sixty (60) days' notice to all Members. Nothing in this Article XII shall be deemed or interpreted to restrict termination under Article X.



## MUTUAL AID AND ASSISTANCE AGREEMENT

### **ARTICLE XIII PRIOR AGREEMENTS**

This Agreement supersedes all prior Agreements between Members to the extent that such prior Agreements are inconsistent with this Agreement. This Agreement does not interfere with Agreements or arrangements that Members may now have or may enter into during the Term of this Agreement with other entities. Members may provide or receive Mutual Aid and Assistance under agreements with other entities without in any way affecting the validity of this Agreement and without the necessity of obtaining the assent of any other Member

### **ARTICLE XIV PROHIBITIONS ON THIRD PARTIES AND ASSIGNMENT OF RIGHTS/DUTIES**

This Agreement is for the sole benefit of the Members and is not intended to create any third-party beneficiaries. Further, this Agreement shall not be assigned directly or by operation of law.

### **ARTICLE XV ADDITIONAL PARTIES**

Subject to the terms and conditions of this Agreement, any eligible public power entity may become a Member under this Agreement by executing an identical Agreement and delivering said Agreement to the AMPA Mutual Aid Coordinator.

### **ARTICLE XVI CONFLICTS**

Prior to any Member (“Aggrieved Member”) filing litigation against any other Member or groups of Members (“Accused Member(s)”) based, in whole or in part, upon this Agreement, the Authorized Official and Utility Executive of the Aggrieved Member shall submit a written offer to the Authorized Official and Utility Executive of the Accused Member(s) to meet and confer in a good faith attempt to resolve the dispute. Should the conflict remain unresolved for sixty (60) days after the written offer to meet and confer, the Aggrieved Member and Accused Member(s) shall attempt to mediate the conflict within ninety (90) days, with the Aggrieved Member and Accused Member(s) each paying a share of the costs of mediation equal to the most recent annual peak of its system electric load (peak load) divided by the sum of the Aggrieved Member and Accused Member(s)’ peak loads. The requirements of this Article XVI constitute preconditions to litigation and no litigation shall be filed in violation herewith.

*SIGNATURE PAGE FOLLOWS*



## MUTUAL AID AND ASSISTANCE AGREEMENT

*IN WITNESS WHEREOF*, the Member has executed and sealed this Agreement by the authority of its governing body duly given to be effective the day and year first above written.

**MEMBER:** \_\_\_\_\_

a Public Power Entity in the City of \_\_\_\_\_, Arkansas.

**Authorized Official:**

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

**Utility Executive:**

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_