

RESOLUTION NO. 1923

A RESOLUTION RATIFYING THE CITY OF GARDNER'S PARTICIPATION IN THE KANSAS MUTUAL AID PROGRAM FOR UTILITIES.

WHEREAS, the City of Gardner desires to cooperate with other cities, districts, and utilities which own and operate utility systems;

WHEREAS, the City of Gardner expresses its intent to encourage and foster mutual aid between and among utilities in the event of disasters and emergencies;

WHEREAS, participation in the program and responding to a request for assistance is strictly voluntary. The agreement does not obligate the City to provide any and all assistance that may be requested by another utility.

WHEREAS, the Electric Utility Board adopted a Resolution authorizing Gardner Energy to enter into an agreement with the Kansas Mutual Aid Program for Utilities on March 3, 2011;

WHEREAS, the authority to enter into mutual aid agreements resides with the Governing Body;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS, AS FOLLOWS:

SECTION ONE: the City of Gardner's participation in the Kansas Mutual Aid Program for Utilities, Exhibit A, is hereby ratified.

SECTION TWO: The City of Gardner shall establish reasonable rates for reimbursement of its labor and equipment costs as contemplated in FEMA rules, and periodically revise such rates as necessary.

SECTION THREE: The City of Gardner will provide mutual aid assistance to other like utilities if the City determines that:

- (a) the reliability and performance of the City's utility system and the public health and safety of the City's utility residents and customers will not be materially and adversely affected; and
- (b) the utility requesting assistance has executed the Kansas Mutual Aid Program Agreement (or an agreement substantially similar in form and content).

ADOPTED by the City Council on this 18th day of May, 2015.

SIGNED by the Mayor on this 18th day of May, 2015.

CITY OF GARDNER, KANSAS

(SEAL)

/s/ Chris Morrow
Chris Morrow, Mayor

Attest:

/s/ Jeanne Koontz
Jeanne Koontz, City Clerk

**KANSAS MUTUAL AID PROGRAM FOR UTILITIES
(KSMAP)**

PROGRAM AGREEMENT

This Agreement is made and entered into by public and private utilities that have, by executing this Agreement, manifested their intent to participate in a statewide program for mutual aid and assistance. For municipalities, this Agreement is authorized under the State of Kansas' statutes at K.S.A. 12-16,117, which provides that municipalities may provide assistance to other municipalities within or without the State of Kansas.

ARTICLE I. PURPOSE

This Kansas Mutual Aid Program Agreement (Agreement) is established to provide a method whereby signatory public and private utilities experiencing an emergency as a result of natural or manmade events in the state of Kansas can obtain emergency assistance, in the form of personnel, equipment, and materials and other associated services necessary to protect the health and welfare of the utilities' customers.

ARTICLE II. CREATION OF KANSAS MUTUAL AID PROGRAM

The Kansas Mutual Aid Program (KSMAP) is created in recognition that emergencies may require assistance in the form of personnel, equipment, materials and other associated services from outside the area of impact. The signatory utilities hereby establish an intrastate program for mutual aid and assistance. Through the Kansas Mutual Aid Program, members coordinate response activities and share resources during emergencies. This Agreement sets forth the procedures and standards for the administration of the intrastate mutual aid program.

By signing this Agreement, each public and private utility acknowledges the mutual benefit, which is received by that utility and, in turn, made available by that utility to other similarly situated utilities. KSMAP is administered for the purpose of providing emergency and other assistance in coordination with other public and private utilities entering into such agreements, as more fully described herein.

ARTICLE III. DEFINITIONS

- A. AGREEMENT - The Kansas Mutual Aid Program (KSMAP) Agreement, which is entered into by and between all participating utilities.
- B. PARTICIPATING UTILITY. Any public and private utility which executes this Mutual Aid Agreement.
- C. REQUESTING UTILITY - A Participating Utility who seeks assistance pursuant to this agreement.

- D. RESPONDING UTILITY - Any Participating Utility which agrees to provide assistance to a Requesting Utility pursuant to this agreement.
- E. NON-RESPONDING UTILITY – A Participating Utility that does not provide aid or assistance during a Period of Assistance under this agreement.
- F. ASSOCIATE MEMBER – Any non utility participant that provides a support role for the Mutual Aid Agreement and does not officially sign the agreement. This would include, for example, state departments and associations.
- G. 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 participating utility.
- H. AUTHORIZED REPRESENTATIVE - An employee or representative of a Participating Utility authorized by that utility's governing board to request or offer assistance under the terms of this Agreement.
- I. COORDINATING ENTITY(IES) - A Coordinating Entity may be authorized by the Requesting Agency to act as its authorized representative in coordinating the activities of the Responding Agencies. This authorization can be a standing authorization or activated by the authorized representative or governing body at the time of the request for assistance. As signatories to this agreement, entities such as the Kansas Municipal Utilities (KMU) and/or the Kansas Rural Water Association (KRWA) are indicating they have resources to provide this support. The Requesting Agency may opt to designate a representative of a Responding Agency to act as its Authorized Representative.
- J. PERIOD OF ASSISTANCE - The period of time beginning with the departure of any personnel or equipment of the Coordinating Entity or a Responding Utility from any point for the purpose of traveling to a Requesting Utility in order to provide assistance, or to a staging area in preparation for providing assistance, and ending upon the return of all personnel or equipment of the Coordinating Entity or the Responding Utility, after providing the assistance requested, to the applicable residence or place of Work, whichever is first to occur. All protections identified in the agreement apply during this period.
- K. PERSONNEL OR EQUIPMENT - The personnel or equipment, and any other materials or other associated services necessary to protect the health and welfare of utility customers, belonging to a Coordinating Entity or Responding Utility or sponsored by a Coordinating Entity or a Responding Utility through the mutual aid program or any other mutual aid agreement with any third party or parties.
- L. CONFIDENTIAL INFORMATION – Any document shared with any signatory of this agreement that is marked confidential, including but not limited to any map, report, notes, papers, opinion, or e-mail which relates to the system vulnerabilities of a Participating Utility or Associate Member.
- M. WORK OR WORK-RELATED PERIOD - Any period of time in which either the personnel or equipment of the Coordinating Entity or a Responding Utility are being used by or for the benefit of a Requesting Utility to provide assistance.

- N. SCHEDULE OF EQUIPMENT RATES - The latest rates published by Federal Emergency Management Agency under the response and recovery directorate applicable to major disasters and emergencies.
- O. FEMA - The Federal Emergency Management Agency, or its agents, successors, or assigns.
- P. KANSAS DIVISION OF EMERGENCY MANAGEMENT - The primary state agency, its agents, successors, or assigns which provides a comprehensive, risk-based emergency management program of mitigation, preparedness, response and recovery. The Division works directly with FEMA.
- Q. NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS) – A national, standardized approach to incident management and response that sets uniform processes and procedures for emergency response operations.

ARTICLE IV. ADMINISTRATION OF KSMAP

KSMAP is under the guidance of a steering committee comprised of representatives of Kansas Municipal Utilities (KMU), the Kansas Rural Water Association (KRWA), the Kansas Section of the American Water Works Association (KsAWWA), Kansas Water Environment Association (KWEA), Kansas Department of Health and Environment (KDHE), Kansas Department of Emergency Management (KDEM) and the Kansas Corporation Commission (KCC). The Steering Committee will meet at least annually to review the KSMAP.

Each Participating Utility and Coordinating Entity commits to supporting the terms of this agreement. Specifically, they commit to:

- A. Compile and update as necessary a list of all personnel employed by or under contract with the Participating Utility or Coordinating Entity or who are available for providing assistance to any Requesting Utility, including the qualifications, training, licenses and expertise maintained by each person identified by the Participating Utility or Coordinating Entity.
- B. Compile and update as necessary an inventory of equipment and materials maintained by the Participating Utility or Coordinating Entity that are available for providing assistance to any Requesting Utility, including the design specifications, operating requirements and condition of all such equipment and materials identified by the Utility.
- C. Compile and update as necessary an inventory of utility facilities owned and operated by the Participating Utility or Coordinating Entity should such facilities be damaged and require assistance from a Responding Utility.
- D. Provide complete and accurate documentation, including but not limited to completion of forms identifying specific equipment, materials and personnel deployed by the Participating Utility or Coordinating Entity. This will include the time of use, and the specific purpose of use.

ARTICLE V. PROCEDURE

If a Participating Utility becomes a Requesting Utility, the following procedure is established to activate a response and should be followed to the extent practicable under the circumstances:

- A. An Authorized Representative of the Requesting Utility contacts the Authorized Representative of a Participating Utility and/or Coordinating Entity. The Requesting Utility provides the following information either orally or written to the extent known. If the request is made orally, it shall be prepared in writing as soon as practical.
 1. A general description of the damage sustained;
 2. The identity and location of the utility system or systems for which assistance is needed;
 3. The amount and type of personnel; equipment, materials and supplies needed and a reasonable estimate of the length of time they will be needed;
 4. The present weather conditions and the forecast for the next twenty-four (24) hours;
 5. A specific time and place for a representative of the Requesting Utility to meet the personnel from the Responding Utility.
 6. The identification of Work conditions and special constraints such as availability of fuel supplies, lodging/meal support, medical facilities, security and communications.
- B. When contacted by the Requesting Utility, the Authorized Representative of a Participating Utility and/or Coordinating Entity shall assess the circumstance, including the availability of personnel, equipment and materials, to determine whether it is appropriate to provide the assistance. Neither the Participating Utility nor any Coordinating Entity shall be under any obligation to provide assistance to Requesting Utility. If the Participating Utility and/or Coordinating Entity determine that they are able and willing to provide assistance, the Coordinating Entity and/or Participating Utility, now the Responding Utility, shall so notify the Authorized Representative of the Requesting Utility and provide the Requesting Utility with the specifics of the assistance.
- C. When providing assistance under this Agreement, the Requesting Utility and Responding Utility and Coordinating Entities will be organized and function under the National Incident Management System.
- D. The personnel and equipment of any Responding Utility and/or Coordinating Entity shall remain, at all times, under the direct supervision and control of the designated supervisory personnel of the Responding Utility and/or Coordinating Entity, as appropriate.
 1. Any equipment or materials made available to a Requesting Utility shall be maintained by the Requesting Utility strictly as directed by the Responding Utility

and/or Coordinating Entity, including the location at which the equipment is used and the service of the equipment during use. The ownership of any equipment shall remain with the Responding Utility and/or Coordinating Entity and said equipment shall be returned to the Responding Utility and/or Coordinating Entity immediately upon request.

2. Representatives of the Requesting Utility may suggest work assignments and schedules for the personnel of the Responding Utility and/or Coordinating Entity. However, the designated supervisory personnel of the Responding Utility and/or Coordinating Entity shall have the exclusive responsibility and authority for assigning Work and establishing Work schedules for their respective personnel.
 3. The designated supervisory personnel shall maintain daily personnel time records and a log of equipment hours, be responsible for the operation and maintenance of the equipment furnished by the Responding Utility and/or Coordinating Entity, and report Work progress to the Requesting Utility.
- E. The Requesting Utility shall have the responsibility of providing daily communications with the personnel of the Responding Utility and/or Coordinating Entity.

ARTICLE VI. REIMBURSABLE EXPENSES

The terms and conditions governing reimbursement for any assistance provided under this Agreement shall be in accordance with the following provisions and costs:

- A. **PERSONNEL** - During the Period of Assistance, the Responding Utility and/or Coordinating Entity shall continue to pay its employees according to its then prevailing rules and regulations, including overtime. The Requesting Utility shall reimburse the Responding Utility and/or Coordinating Entity for all standard payroll costs and expenses incurred during the Period of Assistance.
- B. **EQUIPMENT** – The Responding Utility and/or Coordinating Entity shall be reimbursed for the use of its equipment during the Period of Assistance according to the **SCHEDULE OF EQUIPMENT RATES** established and published by FEMA. If a Responding Utility uses an alternate basis of rates for equipment listed on the FEMA Schedule of Equipment Rates, it shall provide such rates to the Requesting Utility prior to providing assistance. Rates for equipment not referenced on the FEMA Schedule of Equipment Rates shall be developed based on actual recovery of costs. Reimbursement for the loss of or damage to any equipment caused by the Requesting utility or by its personnel or contractors shall be the replacement cost of the equipment lost or damaged unless such damage is caused by negligence of the Responding Utility or Coordinating Entity’s personnel. In the alternative, the Responding Utility and/or Coordinating Entity may determine that the Requesting Utility will replace, with like kind and condition, the equipment lost or damaged.

- C. MATERIALS AND SUPPLIES - The Responding Utility and/or Coordinating Entity shall be reimbursed for all materials and supplies furnished by it and used or damaged during the Period of Assistance, unless such damage is caused by negligence of the Responding Utility's and/or Coordinating Entity's personnel. The measure of reimbursement shall be the replacement cost of the materials and supplies used or damaged plus handling charges. In the alternative, the parties may agree that the Requesting Utility will replace, with a like kind and quality, as determined by the effected Responding Utility and/or Coordinating Entity, the materials and supplies used or damaged.
- D. TRANSPORTATION - The Responding Utility and/or Coordinating Entity shall transport needed personnel and equipment by reasonable and customary means and shall charge reasonable and customary rates for such transportation.
- E. MEALS, LODGING AND OTHER RELATED EXPENSES - Charges for meals, lodging and other expenses related to the provision of aid pursuant to this Agreement shall be the reasonable and actual costs incurred by the Responding Utility and/or Coordinating Entity.
- F. PAYMENT - Unless mutually agreed otherwise, the Responding Utility and/or Coordinating Entity should bill the Requesting Utility for all expenses not later than ninety (90) days following the Period of Assistance. The Responding Utility may request additional periods of time within which to submit the itemized bill and the Requesting Utility will not unreasonably withhold consent to such request. The Requesting Utility shall pay the bill in full not later than forty-five (45) days following the billing date. The Requesting Utility may request additional periods of time within which to pay the itemized bill, and the Responding Utility will not unreasonably withhold consent to such request. This is provided, however, that all payment shall occur not later than one year after the date a final itemized bill is submitted to the Requesting Member unless the Requesting Utility has claims for reimbursement pending from third parties. If claims are pending, the Requesting Utility may request extensions until 90 days after resolution of a pending claim.

ARTICLE VII. INDEMNIFICATION

The Requesting Utility shall assume the defense of, fully indemnify and hold harmless, the Responding Utility, its officers and employees, from all claims, loss, damage, injury, and liability of every kind, nature, and description, directly or indirectly arising from Responding Utility's work during a specified Period of Assistance. The scope of the Requesting Utility's duty to indemnify includes, but is not limited to, suits arising from, or related to, negligent or wrongful use of equipment or supplies on loan to the Requesting Utility, or faulty workmanship or other negligent acts, errors, or omissions by Requesting Utility or the Responding Utility and/or Coordinating Entity personnel.

Participating Utilities and Coordinating Entities shall each indemnify the other and hold the other harmless from any claims for any injury to personnel; damage to or loss of equipment or materials; any loss of revenue or value arising from any actions taken or not taken in the administration, management and oversight of the mutual aid program; or from any actions taken or not taken in providing assistance to any Requesting Utility, including claims by any third parties.

ARTICLE VIII. 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 Coordinating Entities and the Participating Utilities who receive and provide assistance shall have a duty to defend, indemnify, save and hold harmless all non-responding Participating Utilities and Coordinating Entities, their officers, agents and employees from any liability, claim, demand, action, or proceeding of whatever kind or nature arising out of a Period of Assistance.

ARTICLE IX. INSURANCE

The Participating Utilities and Coordinating Entities shall each 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. Nothing herein shall act or be construed as a waiver of any sovereign immunity or other exemption or limitation on liability that either Participating Utilities or the Coordinating Entities or any Requesting or Responding Utility may enjoy. The Participating Utilities and Coordinating entities should maintain appropriate insurance for:

- A. Any equipment, which may be used in providing assistance to a Requesting Utility,
- B. Employee faulty workmanship and other negligent acts, errors, or omissions,
- C. Meeting the indemnity conditions provided in Article VII, and
- D. Worker's compensation coverage.

ARTICLE X. CONFIDENTIAL INFORMATION

To the extent provided by law, any Participating Utility, Coordinating Entity, or Associate Member shall maintain in the strictest confidence and shall take all reasonable steps necessary to prevent the disclosure of any Confidential Information disclosed under this agreement. If any Participating Utility, Coordinating Entity, Associate Member, third party or other entity requests or demands, by subpoena or otherwise, that a Participating Utility, Coordinating Entity, or Associate Member disclose any Confidential Information, the Participating Utility, Coordinating Entity, or Associate Member shall immediately notify the owner of the Confidential Information. All reasonable steps necessary shall be taken to prevent the disclosure of any Confidential Information by asserting all applicable rights and privileges with respect to such information.

The Participating Utility, Coordinating Entity, or Associate Member shall cooperate fully in any judicial or administrative proceeding relating thereto.

ARTICLE XI. OTHER UTILITIES

The Participating Utilities and Coordinating Entities acknowledge and agree that other utilities not participating in the Agreement may request and receive assistance through the mutual aid program. The Participating Utilities and Coordinating Entities understand that such other utilities not a party to the Agreement will be accorded a lower priority for receiving assistance than those utilities signing the Agreement.

ARTICLE XII. PERFORMANCE NOT OBLIGATORY

This Agreement is voluntary, and the responsibilities set forth under this agreement expressly are not enforceable by either party against the other. This Agreement does not obligate a Participating Utility or Coordinating Entity to provide any and all assistance that may be requested by a Requesting Utility.

ARTICLE XIII. EXCLUSIVITY

This Agreement is not exclusive and does not preclude or limit either a Participating Utility or a Coordinating Entity from executing other mutual aid agreements, whether under this program or otherwise, provided any such other mutual aid agreement should not be inconsistent with the parties' respective responsibilities under this Agreement.

ARTICLE XIV. MODIFICATION

No provision of this agreement may be modified, altered or rescinded by individual parties to the agreement. Modifications to this agreement may be due to programmatic operational changes to support the agreement, legislative action, creation of an interstate aid and assistance agreement, or other developments. Modification requires a simple majority vote of Participating Utilities, Coordinating Entities, Participating Utilities and Associate Members. Approved modifications take effect 60 days after the date upon which notice is sent to the Participating Utilities, Coordinating Entities, and Associate Members.

ARTICLE XV. INTRASTATE AND INTERSTATE MUTUAL AID AND ASSISTANCE PROGRAMS

To the extent practicable, parties to this Agreement shall participate in Mutual Aid and Assistance activities conducted under the State of Kansas Intrastate Mutual Aid and Assistance Program and the Interstate Emergency Management Assistance Compact (EMAC). Members

may voluntarily agree to participate in an interstate Mutual Aid and Assistance Program for utilities through this Agreement if such a program were established.

ARTICLE XVI. SEVERABILITY

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

ARTICLE XVII. TERMINATION OF AGREEMENT

This agreement may be terminated by either a Participating Utility or a Coordinating Entity by written notice to the other parties at the sole option of either the Participating Utility or the Coordinating Entity.

NOW, THEREFORE, in consideration of the covenants and obligations contained herein, authorized representatives of the Participating Utility or the Coordinating Entity duly execute this Kansas Mutual Aid Program Agreement. This Agreement is effective upon execution by each authorized representative.

(Name of Participating Utility or Coordinating Entity)

(Name of Authorized Representative)

(Signature)

(Title)

(Date)