

**RUTLAND REGIONAL PLANNING COMMISSION
EMERGENCY MUTUAL AID AGREEMENT
FOR THE PUBLIC WORKS DEPARTMENTS
OF ITS MEMBER MUNICIPALITIES**

This Mutual Aid Agreement (the “Agreement”) is entered into between the Rutland Regional Planning Commission (“RRPC”) and by and among each member municipality that voluntarily executes and adopts the terms and conditions contained herein.

WHEREAS, the Vermont Supreme Court has held and adopted the position that “ ‘It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation—–not simply convenient, but indispensable.’ ” Valcour v. Vill. of Morrisville, 104 Vt. 119, 158 A. 83, 85 (1932), *citing* Dillon, John, The Law of Municipal Corporations (5th Ed.) par. 237; and

WHEREAS, that upon the adoption of bylaws specifying the process for entering into, method of withdrawal from, and method of terminating service agreements with municipalities, the Vermont Legislature has granted express authority for regional planning commissions to “promote cooperative agreements and coordinate, implement, and administer service agreements among municipalities, including arrangements and action with respect to planning, community development, joint purchasing, intermunicipal services, infrastructure, and related activities....” 24 V.S.A. § 4345b(c); and

WHEREAS, the member municipalities of the RRPC (collectively the “Parties”) may voluntarily agree to participate in mutual aid and public works assistance activities conducted pursuant to 24 V.S.A. § 4345b(d)(2); and

WHEREAS, the RRPC has duly adopted bylaws pertaining to the creation of intermunicipal service agreements pursuant to 24 V.S.A. § 4345b(a) and (b); and

WHEREAS, the Parties recognize that they are vulnerable to a variety of potential, natural and man-made disasters that impact vital public works resources including hurricanes, flooding and extreme winter conditions that in the past have caused severe disruption of essential public works services and severe property damage to public roads, utilities and other public works property; and;

WHEREAS, owning and maintaining all the resources needed to respond to extreme, unexpected and high-demand incidents is cost-prohibitive for most municipalities and entering into a mutual aid agreement provides economic and logistical efficiencies to support any gaps in resources and capabilities; and

WHEREAS, the Parties to this Agreement recognize the benefits of mutual aid in protecting the public, health, safety and welfare and fostering a sense of goodwill and community within a specific geographic region and therefore desire to provide mutual aid and assistance to one another during times of disaster and other types of public works emergencies; and

WHEREAS, the Parties recognize that having this mutual aid agreement and related guidelines is essential to ensuring a consistent, coordinated, and timely response in providing mutual aid; and

NOW, THEREFORE, the Parties hereto agree as follows:

SECTION 1: PURPOSE

The Agreement set forth below, is established to provide a means for public works related entities that are controlled by the RRPC member municipalities, that are in need of mutual aid assistance, to be able to request and receive such aid and assistance in a timely manner from the participating member municipalities including but not limited to personnel, equipment, materials and any other services that may be reasonably necessary to respond to an emergency. The purpose of this Agreement is to formalize the regional mutual aid program. This Agreement to render aid is expressly not contingent upon a declaration of a major disaster or emergency by the federal government or upon receiving federal funds.

SECTION 2: DEFINITIONS

- A. Aid and Assistance** – includes, but is not limited to, personnel, equipment, administrative services, infrastructure, supplies and materials necessary to respond to a request for mutual aid.
- B. Aiding Official** – means a person who is designated by the Aiding Party to determine whether and to what extent the Aiding Party should provide Public Works Assistance to a Requesting Party.
- C. Aiding Party** – means a Constituent Municipal entity that furnishes, equipment, services, personnel or any other Public Works assistance to a Requesting Party.
- D. Agreement** – refers to this Agreement for public works emergency services. Rutland Region municipalities may become a party to this Agreement upon ratification of this Agreement by the RRPC and ratification by the legislative body of the Constituent Municipality that is a party to this Agreement. Each Constituent Municipality that ratifies this Agreement, understands that the Agreement contains all Constituent Municipal entities at the time of ratification, and any other eligible municipality in the future.

- E. Constituent Municipality** – Any municipality located in the Rutland Region, Vermont that is a party to this Agreement.
- F. Disaster** – any natural, mechanical, human-made, technological, or civil emergency that threatens to cause damages of a severity and scale that exceeds the maximum capabilities of a Constituent Municipality.
- G. Emergency** – an event or imminent potential for such an event, either natural or human caused, that results in or may result in, injury or harm to the residences of the Constituent Municipality, or damage to or loss of property.
- H. Mutual Aid Resource List** – A list maintained by each Constituent Municipality of the public works equipment, personnel and any other resources available for the provision of aid and assistance if needed by another Constituent Municipality.
- I. Period of Assistance** – the period of time beginning when the Aiding Party assists the Requesting party by providing equipment, personnel, supplies or any other Public Works Assistance and ending when all Public Works Assistance returns to the regular duties of the Aiding Party.
- J. Public Works Assistance** – means equipment and personnel including, but not limited to; professional engineers, licensed staff, non-licensed personnel who are employed by a Constituent Municipality and used for activities in response to a disaster or emergency, related to roadways, water, stormwater, wastewater and any other public works program.
- K. Requesting Official** - means any person who is designated by the Requesting Party to request Public Works Assistance from a participating Aiding Party.
- L. Requesting Party** - means a Constituent Municipal entity that requests, equipment, services, personnel or any other Public Works assistance from an Aiding Party.

SECTION 3: PROCEDURES

- A. Operations Oversight** – The RRPC shall be responsible for overseeing this Agreement and help to facilitate communications between the Constituent Municipalities. The RRPC will also help to facilitate policies and procedures to guide requests for aid and assistance as set forth below.
- B. Request for Aid** – When a Requesting Party has been impacted by or is in imminent danger of a disaster or emergency, it may request Aid and Assistance from an Aiding Party, by making a verbal request, followed by a written request, to the Aiding Party, within three business days after aid is

needed or contemplated to be needed. An Aid Request Form shall be an addendum, but not an amendment to or modification of this Agreement. Requests should be made by and to the Aiding Party's authorized Aiding Official. A potentially Aiding Party, should not provide aid on its own without first confirming the need for assistance through the communication of the Aiding Official and Requesting Official to ensure that the type of aid being provided is necessary and needed. The provision of aid by an Aiding Party is entirely discretionary under this Agreement and the ultimate decision as to whether to render aid to a Requesting party shall be at the discretion of the Aiding Official in consultation with the legislative body of the Constituent Municipality if possible.

C. Designation of Officials – Each Constituent Municipality shall designate an Aiding Official and Requesting Official and at least one alternate Aiding Official and Requesting Official. Each Constituent Municipality shall be responsible for maintaining its own contact list of all Aiding and Requesting Officials and alternate Officials, along with all means of contact including, but not limited to cell phones, telephones, electronic mail and physical addresses and take reasonable steps to ensure that all Constituent Municipalities have the most current list. The RRPC shall help develop the template of the contact list and annually aid in its distribution after having been provided by the Constituent Municipalities. Said list shall be an addendum, but not an amendment to or modification of this Agreement. The Requesting Officials and the Aiding Officials may be the same person in each municipality (i.e., a director of public works).

D. Information Needed - Request for Aid and Assistance – The Requesting Official shall provide, at minimum, to the Aiding Official and RRPC (for informational purposes only): 1) a description of the disaster or emergency prompting the request; 2) what type of specific assistance is needed; 3) a description of the infrastructure impacted and the specific work needed to repair the infrastructure; and 4) an estimate of the type of public works assistance needed and the period of time it will be needed for. It is further recommended that the Requesting Official propose a plan for meeting with the Aiding Official to discuss the scope of the aid and for the Requesting Official to familiarize him or herself with the personnel and equipment of the Aiding Party (similar in nature to a pre-construction meeting). The Aiding Party shall then provide an estimate to the Requesting Party of expected costs for the scope of work requested and needed.

E. Supervision and Control – It is the intention of this Agreement that supervision and control of personnel will be structured in accordance with Federal Emergency Management Agency's (FEMA) Incident Command System (ICS) of the National Incident Management System (NIMS), and that if the emergency/disaster is multi-jurisdictional, a Unified Command will be employed when practical.

1. When any personnel or equipment is deployed under the terms of this agreement, the Aiding Official shall meet with the Requesting Official. Orders by the Requesting Official will be given to the Aiding Official who will then give orders or direction to their personnel. The Aiding Official shall maintain reasonable contact with the Requesting Official as long as the Aiding Party is providing Public Works Assistance. The personnel of the Aiding Party may only be under the direct control of the Requesting party by a written mutual agreement.
2. In all instances and at all times, the Requesting Official or a designee thereof, shall have the right and responsibility to ensure that all personnel from the Aiding Party are asked to perform only those tasks or operations that are consistent with their training and are in accordance with their home protocols and accepted safe practices.
3. Personnel from the Aiding Party shall continue with the assigned tasks until the Requesting Party releases said personnel and equipment or until the Aiding Party recalls said personnel and equipment. No recall by an Aiding Party shall occur until, if reasonable given the facts and circumstances, the Aiding Official discusses the need for recall with the Requesting Official.
4. Each Aiding Party shall operate in accordance with the protocols of its Constituent Municipality, and all Aiding Party personnel shall act within the scope of his or her own training and certification or under the supervision of a person with the appropriate training and certification. Aiding Party personnel shall not be required to perform in a way that is inconsistent with the practices of their Constituent Municipality protocols or inconsistent with safe practices.
5. The Aiding Official shall be responsible for maintaining all records for time, materials and equipment provided to the Requesting Party; be responsible for the operation and maintenance of equipment provided by the Aiding Party; and report work process to the Requesting Party.

F. Mutual Aid Resource List – Public works resources are included in the annual local emergency plan for each Constituent Municipality. The RRPC shall annually distribute a list of the public works resources for all Constituent Municipalities. All original and updated public works resource lists shall be considered an addendum to, but not a modification of this Agreement.

G. Funds Payable By Each Municipality – the Constituent Municipalities agree that the funds, coming in the form of the amount of services provided by each Constituent Municipality shall be based on the resources available to them at the time aid and assistance is made by a Requesting Party in accordance with Section 4 Part A.

SECTION 4: REQUESTS FOR REIMBURSEMENT

A. Procedures for Reimbursement – Unless the Aiding Party and the Requesting Party agree to a different structure in writing, the Requesting Party shall be ultimately responsible for the reimbursement of the Aiding Party's costs incurred under this Agreement.

1. Within 30 days of the return of all personnel and equipment of the Aiding Party to the Constituent Municipality's homework station, the Aiding Municipality may submit to the Requesting Party, an invoice of all charges related to the aid provided pursuant to this Agreement. The invoice provided by the Aiding Party shall be paid within 30 days of receipt.
2. All invoices generated by the Aiding Party shall be provided to the Requesting Party.
3. Invoices by the Aiding Party shall follow the following standards.
 - a. Personnel. Charges for personnel shall be in accordance with the standard practices of the Aiding Party, including wages, salaries, contributions for insurance and retirement and personnel from the Aiding Party shall continue to accumulate seniority at the rate of the Aiding Party.
 - b. Equipment. Charges for equipment supplied by the Assisting Party, shall be reimbursed at the rental rate established for the same or substantially similar equipment by the regulations of the Federal Emergency Management Agency (i.e., current FEMA Schedule of Equipment Rates), or at any other rate agreed to by the Aiding Party and Requesting Party in writing. Rent for equipment includes the cost of fuel and other consumable supplies, maintenance, service, repairs and ordinary wear and tear.
 - c. Transportation. The Aiding Party shall transport needed personnel and equipment by reasonable and customary means and in accordance with the Aiding Party's usual transportation and travel payment schedule. If such a schedule is unavailable, transportation charges shall be the reasonable and customary rates for such transportation.
 - d. Materials and Ancillary Expenses. Charges for materials and ancillary expenses such as consumable supplies, related to the provision of aid pursuant to this agreement shall be the reasonable and actual costs incurred by the Aiding Municipality.

4. The Aiding Party may invoice the Requesting Party for all expenses incurred during the Period of Assistance. All invoices shall be submitted by the Aiding Official to the Requesting Official. The invoices shall clearly delineate the time and expenses associated with personnel, equipment, transportation and any materials or ancillary expenses. Any question or dispute about an invoice from an Aiding Party shall first be discussed between the Requesting Official and the Aiding Official. If the Parties are still unable to reconcile an invoice, then they shall follow the next sequential procedures of the Dispute Resolution section of this Agreement.

SECTION 5: INSURANCE AND LIABILITY

- A. Insurance** – Each Constituent Municipality shall bear the risk of its own actions, as it does with its day-to-day operations. The Aiding Party shall be responsible for providing insurance to the fullest extent possible, including but not limited to workman’s compensation insurance, general liability insurance, excess liability insurance, and any other types of insurance coverage in amounts recommended by the Vermont League of Cities and Towns, Property and Casualty Intermunicipal Fund (VLCT-PACIF). Such insurance shall cover damage or injury to person, property or equipment owned or provided by an Aiding Party to the extent the damage or injury may have occurred while rendering aid to a Requesting Party.
- B. Indemnification** - To the extent allowed by law, each Requesting Party agrees to indemnify and hold harmless any Aiding Party and its employees, officers, administrators, elected officials and agents from any claim relating to cost, damage or injury of any description to any person or property caused by or through the action of any Aiding Municipality while rendering aid pursuant to his Agreement. Acts of gross negligence, willful misconduct, malfeasance, and/or criminal/illegal behavior are exempt from indemnification.
- C. Liability** – No Constituent Municipality shall have any liability to any other Constituent Municipality by reason of their inability or lack of desire to respond to a request for aid.

SECTION 6: TERM, MODIFICATION AND PERIODIC REVIEW

- A. Term** – This Agreement shall be in effect for one (1) year from the date signed by the initial Constituent Municipality. Thereafter, this Agreement shall be renewed for additional one year terms on an annual basis in conjunction with the local emergency plan.
- B. Termination** – Any Constituent Municipality may voluntarily terminate and withdraw from its participation in this Agreement at any time by a Requesting or Aiding Official giving written notification to the designated Requesting or Aiding

Officials of all other Constituent Municipalities to this Agreement. Electronic mail communications shall be considered written notification for purposes of this Agreement. Termination and withdrawal shall not be effective until sixty (60) days after written notification has been sent. Withdrawal by a Constituent Municipality shall not impact the liability or obligation incurred by the Constituent Municipality under this Agreement prior to the date of termination.

- C. Modification** – Pursuant to 24 V.S.A. § 4345b(d)(4) any modification or amendment to this Agreement shall not become effective unless approved by the RRPC and the legislative body of all the municipalities who are a party to this Agreement. The RRPC shall assist in coordinating any modifications or amendments to this Agreement.
- D. Periodic Review** – On a biennial basis, the designated Aiding and Requesting Officials shall meet to review the terms of this Agreement and make any suggestions as to alterations or modifications if needed base on past performance. The RRPC shall coordinate all meetings under this section.

SECTION 7: MISCELLANEOUS PROVISIONS

- A. Dispute Resolution** – In respect to any dispute that arises pursuant to this agreement the Parties shall first make a good faith effort to work out differences among themselves. Should informal discussions between the Parties fail, then the Parties shall engage the services of a mutually agreed upon third party mediator. The costs of this third party mediator shall be split evenly between the Parties. Should attempts at mediation through a third party mediator fail, then any Party may seek redress in any Vermont Court of competent jurisdiction.
- B. Severability** – Should any clause, portion, section, provision or any other part of this Agreement be held invalid by a court of competent jurisdiction, such judgment shall not affect, impair or invalidate any other portion of the Agreement. The remaining portions of this Agreement shall remain in full force and effect without regard to the provisions that have been invalidated.
- C. Execution of Counterparts** – This agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

NOW THEREFORE, both the Rutland Regional Planning Commission through its duly authorized representative has executed this agreement and all counterparts thereto. Photographic copies shall be considered valid counterparts. Each of the Constituent Municipalities so desiring, have caused this Agreement to be executed by a duly authorized representative, after a vote allowing that duly authorized representative to execute this Agreement by the Constituent Municipality's governing legislative body.

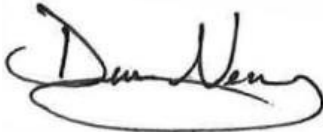
Approved and executed at _____, Vermont this _____ day of _____ 2023.

For the Constituent Municipality of _____.

By: _____
Duly Authorized Representative for _____

Approved and executed at Rutland, Vermont this 1st day of May 2023.

For the Rutland Regional Planning Commission



By: _____
Duly Authorized Representative
for the Rutland Regional Planning Commission