

## EMERGENCY ASSISTANCE AGREEMENT

This Emergency Assistance Agreement has been entered into by the [requesting utility] (hereinafter referred to as the "Requesting Utility") and the signatories hereto (hereinafter referred to singularly referred to as "Assisting Utility" and collectively referred to as "Assisting Utilities") on this \_\_\_\_ day of [month, year], for the establishment of guidelines for the providing of emergency electric restoration service to the [service area].

In consideration of the mutual agreements and undertakings herein, the parties hereby agree as follows:

### **SECTION 1. DEFINITIONS**

- a. Assistance- All acts of Assisting Utility conducted for or on behalf of Requesting Utility, including but not limited to travel to and from the Requesting Utility to the site of the emergency, incurring of Expenses and all activities conducted from the time employees of Assisting Utility begin travel to the site of the emergency until travel from the site of the emergency to the headquarters of Assisting Utility is complete.
- b. Assisting Utility- An electric utility which provides emergency assistance to Requesting Utility. Employees of Assisting Utility shall at all times during Assistance continue to be employees of Assisting Utility and shall not be deemed employees of Requesting Utility for any purpose.
- c. Billing Agent - The Agent designated to collect, consolidate and submit all expense reports of Assisting Utilities pursuant to this Agreement to the Requesting utility, and to receive payment from the Requesting Utility and disburse such payment to Assisting Utilities as appropriate. The Billing Agent is hereby designated as [Assisting Utility].
- d. Expenses - All costs associated with the provision of emergency electric restoration service, including wages, vehicle rental, transportation, lodging, meals, materials, insurance, workers' compensation, costs incurred by self-insured entities, administrative costs associated with the coordination of emergency assistance, all out-of-pocket charges and all other costs, incurred by Assisting Utility as a result of providing Assistance.
- e. Site – the service territory of [requesting utility]
- f. Work – All work required to perform the requirements of this Agreement

## **SECTION 2. COMPENSATION**

All Work provided under this Agreement shall be paid on a time and material basis.

- a. Assisting Utility Labor Costs: Exhibit A contains the straight time and overtime billing rates.
  - i. Hourly Labor Billing Rates shall include all labor costs including payroll, FICA, Federal and State Unemployment Insurance, Worker's Compensation, Vacation, Retirement and other employee benefits, Administrative, General and Excess Liability Insurance, and Administrative mark up. Specific local or state use taxes and fees are not included. The work schedule will be up to fourteen (14) hours per day and up to seven (7) days per week. Refer to Exhibit A for Labor Billing Rates.
  - ii. The crew will be paid and billed for all scheduled work hours including material handling, statutory equipment and tool inspections, and travel to and from the work site. The minimum weekly billing is seventy-two (72) crew hours.
  - iii. Employees reporting to work will be paid a minimum twelve (12) hours each day.
  - iv. Employees will be paid for actual travel time starting when they depart their utility for the Territory, and when they leave the Territory and return to their utility. A minimum 12 hour/maximum of 14 hours per day will be charged for all travel time.
- b. Vehicle Rates: Exhibit C contains the hourly billing rates for the Assisting utility vehicles. Vehicle costs shall be charged as follows:
  - i. For all hours the Vehicles are being used for work, material handling, and travel to and from work site.
  - ii. For actual travel time starting when the vehicles leave the Assisting Utilities' site to the Territory, and when they leave the Territory to the Assisting Utilities' site. A minimum 12 hour/maximum 14 hour per day will be charged for Vehicles.
- c. Non-[state/territorial] corporate taxes and income taxes shall be the sole responsibility of the Assisting Utility. However, any [state/territorial] taxes including but not limited to personal income taxes, gross receipt taxes, customs and duties, import fees, vehicle registration fees or other taxes resulting from this project will be the responsibility of the Requesting Utility. The Requesting Utility will either directly pay or reimburse the Assisting Utility if such taxes are not waived during the emergency.

### **SECTION 3. OBLIGATIONS OF REQUESTING UTILITY**

Requesting Utility agrees to provide Assisting Utility with the following:

- a. [for island operations:] Transportation either by means of commercial or military flight, or barge of all vehicle and equipment to and from the Assisting Utility headquarters and the [requesting utility service area]. Travel arrangements may be coordinated by Requesting Utility or the Federal Emergency Management Agency. The signatories agree that vehicles are to remain [in the service area] for not less than thirty (30) days. Personnel are to remain in the Territory for not less than fourteen (14) days. Rotation of personnel to and from the Requesting Utility shall be by commercial air carrier at the sole expense of Requesting Utility. Once such emergency assistance is completed under this Agreement, Requesting Utility shall arrange for transportation of all remaining personnel, vehicles and equipment from the [service area] to [assisting utility home state] within three days. If Requesting Utility has not made suitable transportation arrangements to return the Assisting Utility's remaining personnel and vehicles to their headquarters by the fourth day after termination of this Agreement, Assisting Utility will continue to charge Requesting Utility for personnel at the wage rate specified in Exhibit A and Assisting Utility will charge Requesting Utility for vehicle rental at two times the per diem rate specified in Exhibit B until such personnel and vehicles arrive at Assisting Utility's headquarters, and Requesting Utility shall pay the same within five (5) days of receipt of an invoice.
- b. Utility poles, wire and all other necessary materials and equipment, all of suitable quality, which may be required for emergency restoration of electric service;
- c. A person to work with each crew of Assisting Utility who is familiar with Requesting Utility's electrical system, local roads and who has direct access to Requesting Utility's communication system;
- d. A description of the electrical system operational plan and other useful information, including maps of distribution circuits, one-line diagrams, system voltage, number of substations, switching configurations, general office, communication system and operating procedures for emergency conditions;
- e. Release of all employees and equipment of Assisting Utility once Assistance is no longer necessary or desirable, or Assisting Utility terminates Agreement pursuant to Sections 2a and 9 of this Agreement;
- f. Reimbursement of all Expenses incurred by Assisting Utilities, within thirty (30) days after receipt of an invoice from Billing Agent;
- g. Hot meals whenever possible, but in any event three (3) meals a day at reasonable intervals; suitable lodging; reasonable personal expenses, including laundry, if available, and

one five-minute telephone call per day per person to the Mainland United States if telephone communications are available;

- h. Suitable storage and maintenance facilities for vehicles and equipment;
- i. Assurance that no other personnel other than the personnel of the Assisting Utility shall utilize Assisting Utility's vehicles.
- j. Security for the Assisting Utility's personnel, vehicles and equipment.

#### **SECTION 4. INDEMNIFICATION**

- a. Requesting Utility shall employ professional operating procedures and prudent emergency practices and in utilizing all employees and equipment of Assisting Utility. Except as the parties may agree otherwise, Requesting Utility shall be responsible for determining the work to be performed by the Assisting Utility and other order in which such work is to be carried out. Personnel of the Assisting Utility agree that such work could jeopardize the health or well-being of their personnel.
- b. Requesting Utility shall indemnify, hold harmless and defend Assisting Utility and its employees, and/or the Billing Agent and its employees from and against any and all claims, losses, damages, costs, suits, judgments and expenses as a result of any damage or injury to any person or any property of the Assisting Utility or any of its employees, to the Requesting Utility or any of its employees, to any third party, or to any other person or property, arising out of this Agreement including, but not limited to, bodily injury, including death, and damage or destruction of any property, whether or not due in whole or in part to any act, omission, or negligence of Assisting Utility for any deductible amounts or for any amounts paid by Assisting Utility as a self-insurer, and workers compensation claims, costs, and expenses. Requesting Utility shall not be liable for any claims, losses, damages, costs, suits, judgments, expenses including, but not limited to, bodily injury, including death, and damage or destruction of any property, stemming from actions or activities not related to the performance of the scope of work for which this Agreement was executed.
- c. In the event any claim or demand is made or suit or action is filed against Assisting Utility or any of its personnel and/or Billing Agent or any of its personnel alleging liability for which Requesting Utility shall indemnify, hold harmless, and defend Assisting Utility or Billing Agent under the paragraph immediately above, Assisting Utility and/or Billing Agent shall promptly notify Requesting Utility thereof, and Requesting Utility, at its sole cost and expense, shall settle, compromise or defend the same in such manner as it, in its sole discretion, deems necessary or prudent so long as Assisting Utility and Billing Agent are fully indemnified and protected.

- d. The Assisting Utility and/or Billing Agent may also provide for its own defense and shall be reimbursed by Requesting Utility for any and all reasonable costs thereof, including attorney's fees.

#### **SECTION 5. OBLIGATIONS OF ASSISTING UTILITY**

*Assisting Utility will:*

- a. Maintain all time sheets and work records for its employees providing Assistance; and
- b. Submit invoices for expenses to the Billing Agent within ten days after Assistance has been terminated. Nothing in the Agreement prevents the Assisting Utilities from submitting periodic invoices to the Requesting Utility for work performed to date.
- c. Provide insurance noted in Section 10.
- d. Comply with the requirements of the Scope of Work, dated [date] a copy of which is attached hereto and made a part hereof as Exhibit D.

#### **SECTION 6. APPLICABLE LAW**

This Agreement is made under and shall be governed by the law of [state in which the Assisting Utility has its headquarters]. Any causes of action against either Party shall be brought in the court of competent jurisdiction located in the county in [state] in which the Assisting Utility has its headquarters.

#### **SECTION 7. SEVERABILITY**

If any section, paragraph, clause or provision of this Agreement shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this Agreement shall be unaffected by such adjudication and all of the remaining provisions of this agreement shall remain in full force and effect as though such section, paragraph, clause or provision or any part thereof so adjudicated to be invalid had not been included herein.

#### **SECTION 8. WARRANTY**

Assisting Utility makes no warranty with respect to any goods or services provided to Requesting Utility and no warranty, either express or implied, oral or written, shall apply to the goods or services provided, including, without limitation, warranties of merchantability and of fitness for specified or intended purpose. All equipment and services furnished by Assisting Utility pursuant to this Agreement are furnished as is.

## **SECTION 9. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, by original or telefax, and each executed counterpart shall have the same force and effect as an original instrument and as if all the parties to all of the counterparts had signed to same instrument. Any signature page of this agreement without impairing the legal effect of any signatures hereof, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

## **SECTION 10. WITHDRAWAL FROM AGREEMENT**

Either party may withdraw from this Agreement upon not less than twenty-four hours prior written notice to the other party after fulfillment of obligations under Section 2a. Assisting Utility may also withdraw from this Agreement if its utility is adversely affected by a storm, flood, drought, earthquake, explosion, act of God, strike or other labor dispute, civil disturbance, war and other unforeseen event beyond reasonable control of Assisting Utility if such event creates a situation in which Assisting Utility, in its sole discretion, requires release of its personnel and/or vehicles for the continued operation of Assisting Utility's system. If Assisting Utility must withdraw from this Agreement pursuant to the previous sentence, Assisting Utility shall make arrangements for the transportation of the personnel and vehicles from the site of the emergency to Assisting Utility's headquarters, and Requesting Utility shall reimburse Assisting Utility for the entire cost of such transportation. Notice of withdrawal shall not affect any obligations that may have been incurred hereunder prior to that date. Requesting Utility may not withdraw from this Agreement while it is receiving assistance pursuant to this Agreement

## **SECTION 11. INSURANCE**

Assisting Utility shall provide either: (i) a certificate of self-insurance or (ii) provide a Certificate of Insurance consistent with Exhibit C – Insurance Requirements.

## **SECTION 12. ORDER OF PRECEDENCE**

In the event of any inconsistencies between the written documents comprising this Agreement, the terms of this Emergency Assistance agreement will take precedence over any other document.

### **SECTION 13. CHANGES**

The Requesting Utility may at any time and without notice to the sureties issue a written request for changes in the Work if within its general scope. Within the time specified in the request but not later than thirty (30) days after its receipt, the Assisting Utilities shall submit an estimate of the effect of the changes, if any, upon the Agreement price, the completion date, or other terms or conditions of the Agreement. The changes shall not be put into effect until ordered in writing by the Requesting Utility. Compensation, for changes, or extensions of the completion date because of changes, or other modifications of the Agreement due to change shall be set forth in Agreement change orders. Provided however, that disagreement between the parties on adjustments for changes shall not excuse the Assisting Utilities from proceeding with the prosecution of the Work as changed. The Requesting Utility reserves the right to remove any one of the bid items from the scope of work for the exact value noted in the bid schedule throughout the duration of the project if necessary.

### **SECTION 14. TERMINATION FOR CONVENIENCE**

- a. The Requesting Utility may, at any time, terminate the Agreement for its convenience and without cause.
- b. Upon receipt of written notice from the Requesting Utility of such termination for the Requesting Utility's convenience, the Assisting Utilities shall:
  - i. cease operations as directed by the Requesting Utility in the notice;
  - ii. take actions necessary, or that the Requesting Utility may direct for the protection and preservation of the Work;
  - iii. except for Work directed to be performed prior to the effective date of the termination stated in the notice, terminate all existing subcontracts and purchase order and enter into no further subcontracts and purchase orders.
- c. In the case of such termination for Requesting Utility's convenience, the Assisting Utilities shall be entitled to receive payment for Work executed and reasonable costs incurred (as outlined in the Scope of Work) by reason of such termination. All materials, supplies and equipment purchased in connection with the scope of work shall, if and when paid for by the Requesting Utility, become the property of the Requesting Utility.

IN WITNESS WHEREOF, the signatories have caused this Agreement to be extended by their duly authorized officers.

By: [requesting entity]

Date: \_\_\_\_\_

\_\_\_\_\_

[Name]

[Title]

By: [Insert responding utility]

Date: \_\_\_\_\_

\_\_\_\_\_

[Name]

[Title]

Approved as to Form



**EXHIBIT A**

**Wage Rates**

Classification	Straight Time Billing Rate
Supervisor/General Foreman	
Line Crew Foreman	
Working Forman	
Journey Level Lineworker	
Apprentice Lineworker	
Pre-Apprentice/Groundsman	
Fleet Mechanic	
Administrative Billing Support	

Classification	Over Time Billing Rate
Supervisor/General Foreman	
Line Crew Foreman	
Working Forman	
Journey Level Lineworker	
Apprentice Lineworker	
Pre-Apprentice/Groundsman	
Fleet Mechanic	
Administrative Billing Support	

**EXHIBIT B**

**VEHICLE RATES**

Type Truck	Hourly Billing Rate
Service Truck – 41’ Bucket	
Line Truck – 55’ Bucket	
Line Truck – 65’ Bucket	
Digger Derek	
Pickup Truck	
Pole Trailer	

**EXHIBIT C**

**INSURANCE REQUIREMENTS**

- a. Assisting Utility is required to obtain and maintain in effect the following insurance coverage specified below. As an alternative to such coverage, Assisting Utility may provide a certificate of self-insurance stating that the Assisting Utility is an authorized and qualified self-insurer by the [assisting utility home state] for both workers compensation and liability, is in full compliance with all provisions of [state statutes], and maintains fully funded reserve accounts. These accounts, as authorized by the governing board of the Assisting Utility, are solely for the purpose of providing relief from applicable claims for which the Assisting Utility may become liable. Defense costs in all primary liability policies shall be “outside the limit”, i.e., the full policy limits are for the payment of damages. Failure to provide the required insurance as requested shall be grounds to rescind the Contract.
- b. The Assisting Utility shall at its expense before any work is commenced at the Site cause to be issued and maintained until thirty (30) days after acceptance of the work insurance as justified below, which shall include coverage for operations by the Assisting Utility or anyone directly or indirectly employed by them. A certification shall be supplied by the Assisting Utility evidencing the following insurance in force on the part of the Work to be performed in the [service area].
- c. The minimum insurance requirements are:
  - i. Workmen’s Compensation and Unemployment Insurance covering all employees engaged directly or indirectly in the performance of the work in accordance with the statutory requirements of or applicable to the [service area].
  - ii. Comprehensive General Liability including:
    - Premises-Operations
    - Products and Completed Operations
    - Broad Form Property Damage
    - Contractual Liability
    - Explosions and Collapse Hazard
    - Underground Hazard
    - Personal Injury with Employment Exclusion deleted
      - 1) Public Liability per person and per accident (not in the aggregate) . . . . .
      - . . . . . \$2,000,000.00
      - 2) Excess liability, Property Damage and Bodily Damage per accident (not in the aggregate) . . . . \$2,000,000.00
  - iii. Automobile Liability Insurance for Owned, Hired, Non-Owned Vehicles:
    - 1) Public Liability (per person and per accident) (not aggregate):
    - \$2,000,000.00

2) Property Damage (per accident) (not in the aggregate) \$100,000.00

- d. Assisting Utilities shall endeavor to provide thirty (30) days written notice to the Authority prior to cancellation of any policy. Work shall not proceed in the [service area] until such certificates or letters of coverage are in the possession of and approved by the Authority. Assisting Utility shall name the Authority as insured covered party, as its interest may appear on all insurance policies obtained or maintained by Assisting Utility pertaining to the part of the Work to be performed in the [service area].