

MUTUAL AID AND ASSISTANCE AGREEMENT

Marshall County Fiscal Court and Elliott County Fiscal Court seek to enter into a Mutual Aid and Assistance Agreement in order to provide for the sharing of resources, personnel, and equipment in the event of a local disaster or other emergency;

Pursuant to Kentucky Revised Statutes (KRS 39B.040), municipalities and local governments are allowed to enter into mutual aid and assistance agreements, which may include provisions for the furnishing and exchanging of supplies, equipment, facilities, personnel, and services during a natural or human-made disaster and/or other emergency; now

THEREFORE, the parties agree as follows:

SECTION I

DEFINITIONS

- A. "Agreement" shall mean this document
- B. "Assistance" shall mean any and all acts of Assisting Agency conducted for or on behalf of Requesting Agency, including but not limited to, travel to and from the site of the emergency, incurring of expenses, and all Assistance activities conducted from the time employees or agents of Assisting Agency begin travel to the site of the emergency until travel from the site of the emergency to the headquarters of Assisting Agency is complete.
- C. "Assisting Agency" shall mean an agency which has agreed to provide Assistance as set forth in this Agreement, and which actually provides Assistance to a Requesting Agency. Employees or agents of Assisting Agency shall at all times during Assistance continue to be employees or agents of Assisting Agency and shall not be deemed to be employees or agents of Requesting Agency for any purpose.
- D. "Requesting Agency" shall mean an agency which has requested Assistance as set forth in this Agreement, and which actually receives Assistance from an Assisting Agency.
- E. "Authorized Representative" shall mean Agency CEO, Emergency Manager, or other Designee as assigned by that Agency.
- F. "Expenses" shall include:
1. Labor costs incurred by the Assisting Agency per the wages paid under the then-existing wage agreements or procedures, regardless of how established. Fringe benefit rates, as listed in Attachment A, are allowed, however overhead or administrative costs are not allowed.
 2. Equipment costs incurred by the Assisting Agency, including, but not limited to, hourly charges for hours traveled and worked, which shall be in accordance with the FEMA Standard Equipment Cost Code Rates. Fuel may only be claimed if not covered by the FEMA Standard Equipment cost codes.
 3. Lodging for requested employees or agents if not provided by the Requesting Agency.

4. All necessary meals, food, and drink not provided by the Requesting Agency. Meal tips are to be capped at 20%. No expenses for alcohol shall ever be reimbursed.
5. Personal Protective Equipment necessary for the work assigned are allowable expenses under this Agreement.

SECTION II

OBLIGATIONS OF THE PARTIES

- A. Provision of Aid and Assistance – Pursuant to the terms and conditions set forth in this Agreement, the parties hereto shall provide each other with Aid and Assistance in the event of a local disaster or emergency. It is mutually understood that each party's foremost responsibility is to its own citizens. This Agreement shall not be construed to impose an absolute obligation on any party to this Agreement to provide Aid and Assistance pursuant to a request from another party. Accordingly, when Aid and Assistance have been requested, a party may deem itself unavailable to respond and shall so inform the Requesting Agency. Nothing in this Agreement shall be construed to alter, amend, or nullify any legally required duties or obligations of either party, nor shall anything be construed so as to be in conflict with any state or federal laws or regulations.
- B. Procedures for Requesting Assistance – Requests for Assistance shall be made by an Authorized Representative of a party to an Authorized Representative of the other party. Such request must indicate that it is made pursuant to this Agreement. Such request may be made orally by telephone or in person, to be followed as soon as practicable by a written confirmation of that request.

SECTION III

REIMBURSEMENT

- A. Except as otherwise provided below, and as set forth above as recognized "Expenses", it is understood that Requesting Agency shall reimburse Assisting Agency for documented costs and expenses incurred by Assisting Agency as a result of extending Aid and Assistance to Requesting Agency.
 1. The Requesting Agency shall not be responsible for reimbursing Assisting Agency for the costs of any damage caused by the negligence, gross negligence, willful or wanton misconduct, intentional misuse, or recklessness of Assisting Agency's employees or agents. Assisting Agency's employees and agents shall at all times use reasonable care in their conduct and in the use and control of all materials, equipment, and supplies used by them during the period of Assistance.
 2. Record Keeping – Requesting Agency shall provide information, directions, and assistance for record keeping to Assisting Agency's employees or agents. Assisting Agency shall maintain records and invoices for reimbursement.
- B. Billing and Payment – Assisting Agency shall send an invoice package for reimbursable costs and expenses which are in compliance with assisting agency's payroll policy, together with appropriate documentation as required by Requesting Agency, as soon as practicable after said costs and expenses are incurred. Payment will not be made by Requesting Agency until mutual aid invoices have been reconciled and approved. If the work is to be ultimately reimbursed by federal funding, the reconciliation and approval may include federal review prior to payment (e.g. FEMA Public Assistance Obligation). Invoice Package items should include at a minimum:
 1. Invoice cover sheet

2. Activity Documentation in the form of a daily activity narrative/Activity Description/ICS 214 forms/other activity tracker
3. Labor and Equipment Hours on a daily basis, preferably in the form of a FEMA "FAL Summary" and FEMA "FAE Summary" (aka FEMA National Template)
4. Payroll Policy in effect at time of deployment
5. Fringe Rate Amounts for both Regular Time and Overtime (preferably in the FEMA format (see Attachment A)
6. Equipment Make/Model Documentation (including equipment photos if at all possible)
- 7.. Written Request for Assistance from Requesting Agency (as referred to in Section II of this agreement).

C. Inspection of Records – Assisting Agency agrees that in addition to providing all backup documents as required for mutual aid invoicing; it shall make its records regarding costs and expenses for assistance provided under this Agreement available for audit and inspection upon request by the Requesting Agency and any state or federal agency, and shall maintain such records for such time period as required by law.

SECTION IV

ASSISTING AGENCY'S EMPLOYEES

- A. Rights and Privileges - Whenever the Assisting Agency's employees or agents are rendering Aid and Assistance pursuant to this Agreement, such employees shall at all times remain the responsibility of the Assisting Agency and retain the same powers, duties, immunities, and privileges they would ordinarily possess if performing their duties within the geographic limits of the Assisting Agency.
- B. Workers' Compensation - Requesting Agency shall not be responsible for reimbursing any costs, damages, or benefits to Assisting Agency's employees or agents due to personal injury or death occurring during the periods of time such employees or agents are engaged in the rendering of Aid and Assistance under this Agreement. It is mutually understood that Requesting Agency and Assisting Agency shall each be individually responsible for maintaining any and all required workers' compensation coverage or other similar insurance.

SECTION V

HOLD HARMLESS

To the extent permitted by law, each party (as Indemnitor) agrees to protect, defend, indemnify, and hold harmless the other party (as Indemnitee), and its officers, employees, and agents, from and against any and all losses, penalties, damages, assessments, costs, charges, professional fees, and other expenses or liabilities of every kind and nature arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind in connection with or arising out of Indemnitor's negligence, gross negligence, willful or wanton misconduct, intentional misuse, or reckless acts, and/or errors and/or omissions. To the extent that immunity does not apply, each party shall bear the risk of its own actions, as it does with its day-to-day operations, and determine for itself what kinds of insurance, and in what amounts, it should carry. Each party understands and agrees that any insurance protection obtained shall in no way limit the responsibility to indemnify, keep, and save harmless the other parties to this Agreement.

SECTION VI

AMENDMENTS

This Agreement may be modified at any time upon the mutual written consent of the parties. Additional agencies may become parties to this Agreement upon the acceptance and execution of this Agreement.

SECTION VII

DURATION OF AGREEMENT

- A. This agreement is retroactive to December 9, 2021.
- B. Term – This Agreement shall be for a term of five (5) years from the date of execution by both parties, unless the Agreement is renewed or terminated as set forth in this section.
- C. Renewal – This Agreement may be extended for an additional five (5) year term by written agreement of the parties hereto.
- D. Termination – Any party may terminate this Agreement upon thirty (30) days' written notice. A termination shall not affect the obligation of any party to reimburse the other for the costs and expenses of rendering aid and assistance incurred prior to the effective date of termination.

SECTION VIII

HEADINGS

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

SECTION IV

SEVERABILITY

Should any clause, sentence, provision, paragraph, or other part of this Agreement be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Agreement. In the event that parties to this Agreement have entered into other aid and assistance agreements, those parties agree that, to the extent a request for aid and assistance is made pursuant to this Agreement, those other aid and assistance agreements are superseded by this Agreement.

SECTION X

EFFECTIVE DATE

This Agreement shall take effect upon its execution by both parties.

SECTION XI

This Agreement shall not be assigned, in whole or in part, by either party, without the express written consent of the other party.

This, the 15 day of March 2022.

Marshall County Fiscal Court

Signed: 

Position: JUDGE EXECUTIVE

Date: 5-17-22

Other Agency: Elliott County Fiscal Court

Signed: 

Position: Judge Executive

Date: 3/15/2022