

AGREEMENT FOR EMERGENCY ASSISTANCE

THIS AGREEMENT FOR EMERGENCY ASSISTANCE (this "Agreement") is made and entered into as of this ____ day of _____, 201_ (the "Effective Date") by and between the undersigned Public Gas System, _____ (herein the "Operator"), and those other Public Gas Systems who shall have also executed and delivered to the Carolinas Public Gas Association ("CPGA") an identical or substantially similar Agreement for Emergency Assistance and who shall not have terminated such Agreement at the time emergency assistance is requested.

WITNESSETH:

WHEREAS, in the ordinary course of its operations, the Operator has employees with technical expertise in matters pertaining to the delivery of natural gas service, and owns equipment, facilities, properties, and other resources for that purpose; and

WHEREAS, subject to the terms and conditions set forth herein, and taking into consideration the Operator's utility responsibilities and primary operations to serve its own customers, the public gas companies that have executed this agreement are willing, upon request from time to time, to perform specific services on an emergency or non-routine basis, and in connection therewith to make available such equipment, facilities, properties, and other resources, as may be requested from each other; and

WHEREAS, the Operator is authorized under the applicable law in the State where it is located to enter into such agreements with other natural gas systems to provide mutual aid and assistance in restoring and providing natural gas services in the event of natural disasters or other emergencies; and

WHEREAS, the mutual aid contracts may include provisions for providing personnel and furnishing equipment, apparatus, supplies and materials; and

WHEREAS, the Operator is willing to provide personnel and furnish equipment, apparatus, supplies and materials to the other public gas systems entering into this agreement under the terms and provisions hereinafter provided.

NOW, THEREFORE, in consideration of the execution and delivery of identical or substantially similar Agreements for Emergency Assistance by other public gas systems, and the premises and mutual covenants contained herein and the mutual benefit provided thereby, IT IS HEREBY AGREED:

Article 1. Applicability and Term

- 1.1 Applicability: This Agreement shall apply to the Operator as of the Effective Date and any and all other public gas systems that have duly approved, executed, and delivered this Agreement to the CPGA (hereinafter collectively "Participating Systems" or individually "Participating System") either prior to or subsequent to the Effective Date and shall apply to each Participating System whether it is requesting assistance from another public gas system ("Requesting System") or is providing services as requested hereunder ("Responding System").
- 1.2 Term: The term of this Agreement shall commence upon the execution and delivery of this Agreement to the CPGA by the Operator and shall continue until terminated by the Operator at any time by giving CPGA thirty (30) days prior written notice of its desire to so terminate this Agreement. Termination of this Agreement shall not affect the Operator's compensation and/or indemnification rights and obligations under Sections 3 and 4 hereof, or any other accrued liability or obligation hereunder, including, without limitation, the obligation of a Requesting System to pay amounts due hereunder

Article 2. Provision of Emergency Assistance

- 2.1 Services: In the event of a natural disaster or other emergency affecting the natural gas system of any Participating System, the Responding Party upon the request of a Requesting System, may furnish to said Requesting System manpower, equipment, apparatus, supplies and materials as requested by said Requesting System (collectively "Services"); provided, however, that the Operator shall not be required to imperil the operation of its natural gas system, and it shall be the sole and absolute judge of its ability and capacity to furnish personnel, equipment, apparatus, supplies and materials when requested; provided further that nothing in this Agreement shall be construed to deprive the Operator of its discretion to decline to send, or to recall, its personnel, equipment, supplies, materials or apparatus in aid of a Requesting System under any circumstances and at any time, whether or not obligated by contract to do so, and neither the Operator, nor any of its officers, agents, or employees may be held liable in any civil or criminal action for declining to send, or for recalling, personnel, equipment, apparatus, supplies or materials to a Requesting System under this Agreement.
- 2.2 Personnel of the Responding System. Personnel furnished by the Responding System pursuant to this Agreement -- while providing aid hereunder and while traveling to and from a Requesting System to provide aid hereunder -- shall be conclusively deemed, for all purposes, to remain personnel of the Responding System and shall retain the same rights, privileges, immunities and benefits as they receive while performing their normal duties for the Responding System.

2.3 Limitations of Liability / Hold Harmless. In performing Emergency Assistance pursuant to this Article, Responding System will exercise due care to assure that the Services are performed in a workmanlike manner in accordance and consistent with any applicable legal standards. The sole and exclusive responsibility of the Responding System for any deficiency therein shall be promptly to correct or repair any deficiency or error or to re-perform such Services, in either case at no additional cost to the Requesting System, so that the Services fully conform to the standards described in this Section. The Responding System makes no other warranty with respect to the provision of Services, and the Requesting System agrees to accept any Services without further warranty of any nature.

In furnishing Services under this Agreement, neither the Responding System, nor any officer, director, employee, or agent thereof, shall have any responsibility whatsoever to the Requesting System other than as stated in this Agreement, and the Requesting System specifically releases and holds harmless the Responding System and such persons, on account of any claims, liabilities, injuries, damages, or other consequences arising in connection with the provision of such Emergency Assistance under any theory of liability, whether in contract, tort (including negligence or strict liability), or otherwise, it being understood and agreed that any personnel provided hereunder are made available without warranty as to their suitability or expertise.

Article 3. Compensation for Emergency Assistance.

3.1 A Requesting System receiving assistance from a Responding System pursuant to this Agreement shall compensate the Responding System as follows:

a) Personnel. A Requesting System shall pay the Responding System for the use of its officers, agents and employees in supplying Emergency Assistance under this Agreement an amount equal to the sum of the following:

i) First seven days of Services: For each officer, employee or agent of the Responding Party that provides services under this Agreement, the Requesting System receiving the services shall reimburse the Responding System the actual cost of the Responding System, including administrative costs, incurred under the Responding System's schedule of pay and other compensation plan in an amount not to exceed for each hour the amount equal to the product of: 1.5 times the normal base pay of any non-FLSA exempt officer, employee or agent of the Responding System multiplied by the number of hours that the individual is actively involved in providing emergency assistance pursuant to this Agreement, plus the actual benefits paid by the Responding System to or for the individual while he/she is actively involved in providing emergency assistance pursuant to this Agreement.

Further, payment shall be made under this subsection 3.a)i) to reimburse the Responding System for the actual cost of the Responding System, including administrative costs, incurred under the Responding System's schedule of pay or other compensation plan in an amount not to exceed an amount equal to the sum of: the normal compensation for the established pay period for any FLSA exempt officer, employee or agent of the Responding System and any bonus, not to exceed 1.5 times the compensation for the established pay period, awarded to such FLSA exempt officer, employee or agent of the Responding System by the Responding System for the efforts and

accomplishments of the individual in providing emergency assistance under this Agreement, plus the actual benefits paid by the Operator to or for the individual while he/she is actively involved in providing emergency assistance pursuant to this Agreement.

x) 1.5 times the normal base rate of the officer, employee or agent of the Responding System multiplied by the number of hours that individual is actively involved in providing emergency assistance pursuant to this Agreement; plus

y) The actual benefits paid by the Responding System to or for that individual while he/she is actively involved in providing emergency assistance pursuant to this Agreement.

- ii) Personnel Not Leaving Service Territory: For each officer, employee or agent of the Responding System that does not leave the Responding System's service territory, the Requesting System shall pay an amount equal to the sum of the actual wages or salary, plus benefits paid by the Responding System for the time the officer, employee or agent is actively involved in providing emergency assistance pursuant to this Agreement.
- iii) After seven consecutive days of Services: For each officer, employee or agent of the Responding System that provides services under this Agreement for a period in excess of seven (7) consecutive days (whether for one or several Requesting Systems combined), the Requesting System receiving the services shall reimburse the Responding System the actual cost of the Responding System, including administrative costs, incurred under the Responding System's schedule of pay and other compensation plan in an amount not to exceed -- for each hour in the eighth day and subsequent consecutive days -- an amount equal to the product of: 2 times the normal

base pay of any non-FLSA exempt officer, employee or agent of the Responding System multiplied by the number of hours that the individual is actively involved in providing emergency assistance pursuant to this Agreement, plus the actual benefits paid by the Responding System to or for the individual while he/she is actively involved in providing emergency assistance pursuant to this Agreement.

Further, payment shall be made under this subsection 3.a)iii) to reimburse the Responding System for the actual cost of the Responding System, including administrative costs, incurred under the Responding System's schedule of pay or other compensation plan in an amount not to exceed in the eighth day and subsequent consecutive days an amount equal to the sum of: the normal compensation for the established pay period for any FLSA exempt officer, employee or agent of the Responding System and any bonus, not to exceed -
- in the eighth day and subsequent successive consecutive days -- 2 times the compensation for the established pay period, awarded to such FLSA exempt officer, employee or agent of the Responding System by the Responding System for the efforts and accomplishments of the individual in providing emergency assistance under this Agreement, plus the actual benefits paid by the Responding System to or for the individual while he/she is actively involved in providing emergency assistance pursuant to this Agreement.

- iv) Costs and Expenses: The Requesting System shall reimburse all out-of-pocket costs and expenses of the Responding System in furnishing personnel, including, without limitation, transportation expenses for travel to and from the disaster area. Further, a Requesting System receiving services of personnel under this Agreement shall, if necessary, house and feed the personnel of the Responding System actively involved in providing Emergency Assistance at its sole cost and expense. For the purpose of this subsection, the term "actively involved in providing emergency assistance" shall apply to time worked, including travel time, and shall not apply to time when such individuals are sleeping or otherwise off duty. The Responding System and a Requesting System may agree orally or in writing to other reimbursable costs of personnel.
- b) Equipment and Apparatus. A Requesting System shall pay the Responding System for the use of all equipment and apparatus furnished by the Responding System in the provision of emergency assistance pursuant to this Agreement at the Responding System's regular equipment and apparatus rate; provided, however, that such rate(s) shall not exceed the FEMA rate(s) for similar equipment and apparatus unless agreed to in writing by the Requesting System.
- c) Materials and Supplies. A Requesting System shall pay to the Responding System the replacement costs, plus ten percent, of all supplies and materials provided by the Responding System and used in rendering emergency assistance pursuant to this Agreement such that such materials and supplies will be replaced by Responding Party.

3.2. Records . Each Participating System (whether acting as a Requesting System or as a

Responding System) shall cooperate in providing in a timely fashion all records or data reasonably requested to allow and facilitate applications for benefits, reimbursement, compensation, or otherwise effectuate its recordkeeping and reporting purposes in connection with the receipt or provision of Emergency Assistance.

Article 4. Indemnification

- 4.1 Indemnification: A Requesting System receiving Emergency Assistance pursuant to this Agreement hereby agrees, to the fullest extent permitted by law but without waiving and subject to all defenses for governmental entities, to release, indemnify, defend and hold harmless the Responding System, 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 emergency assistance to said Requesting System, including, without limitation, those resulting or arising (directly or indirectly) from the acts or omissions (negligent or otherwise) of the Responding System or its officers, agents or employees, except those resulting solely from the willful or wanton misconduct or gross negligence of the Responding System or its officers, agents or employees.

Notwithstanding the foregoing, in no event shall a Requesting System be liable to the Responding System pursuant to the indemnification provided under this Section 4 in an amount excess of \$1,000,000.

- 4.2 Procedure: In the event any claim or demand is made or suit or action against the Responding System alleging liability for which the Requesting System shall indemnify and hold harmless the Responding System, the Responding System shall promptly notify the Requesting System thereof, and the Requesting System, at its sole cost and expenses, shall settle, compromise, or defend the same in such manner as it in its sole discretion deems necessary or prudent.

Article 5. Miscellaneous

- 5.1. Participation of CPGA. CPGA's Administrative Director shall endeavor to notify each Participating Party of the identity and contact personnel of each other Participating Party as it executes and delivers an identical or substantially similar Agreement, and shall, from time to time, provide an updated list of all Participating Parties. The CPGA shall provide such other coordination and services as the Participating Systems may request and direct according to agreed upon protocols and operating procedures. The Operator hereby acknowledges that CPGA, acting simply as a coordinator, shall not itself be responsible for the provision of emergency services hereunder or any liability hereunder and the Operator hereby agrees, to the fullest extent permitted by law but without waiving and subject to all defenses for governmental entities, to release, defend and hold harmless CPGA, and its officers, agents and employees from and against any and all loss, liabilities, claims and 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 any such list, or update thereof, the provision of emergency assistance by the Operator hereunder, or this Agreement, including, without limitation, those resulting or arising (directly or indirectly) from the acts or omissions (negligent or otherwise) of CPGA, or its officers, agents or employees, except those resulting solely from the willful or wanton misconduct or gross

negligence of the CPGA or its officers, agents or employees. Notwithstanding the foregoing, in no event shall an Operator be liable to the CPGA this Section 5 in an amount excess of \$1,000,000.

- 5.2. Counterparts. This Agreement may be executed in one or more counterparts. The Operator acknowledges that each of the Participating Systems shall execute and deliver to CPGA an identical or substantially similar Agreement for Emergency Assistance and agree that their mutual obligations hereunder, as a Requesting System or a Responding System, are memorialized by the executed copies delivered to the CPGA, and that, together, they shall be deemed one and the same Agreement.
- 5.3. Novation / Entire Agreement. If the Operator has become bound by the terms and provisions of an Emergency Assistance Agreement previously delivered to CPGA under CPGA's Emergency Assistance Program, the Operator hereby terminates that agreement and, except as specifically provided therein, the terms and provisions thereof shall become null and void. The Agreement contains the entire agreement between the Operator and each and every Participating System delivering this Agreement to the CPGA as to their respective rights and obligations related to the provision or receipt of Emergency Assistance to or from any other Participating System and supersedes any prior or contemporaneous contracts, agreements, understandings, or arrangements, whether written or oral, with respect thereto. Any oral or written statements, representations, promises, negotiations, or agreements, whether prior thereto or concurrently herewith, are superseded by and merged into this Agreement, except as to those fully executed and written agreements between the Operator and other gas system(s) already existing as of the Effective Date and not previously delivered to CPGA; such agreements shall remain valid and in full force and effect as between the parties thereto.
- 5.4. Amendments. This Agreement shall not be amended, modified, or otherwise changed except

when done so in writing and upon the prior written consent of all the Participating Systems, who at that time have not terminated their respective Agreements for Emergency Assistance, or given notice of the termination thereof. However, the Operator hereby acknowledges that each of the Participating Systems may also provide or receive emergency assistance under understandings or agreements other than under this Agreement for Emergency Assistance without in any way affecting the validity of this Agreement and without the necessity of obtaining the assent of any other Participating System.

5.5. Severability. If any provision of this Agreement or portion thereof is determined to be void or unenforceable by a court of competent jurisdiction, then such determination shall not affect any other provision of this Agreement or portions thereof, all of which other provisions and portions thereof shall remain in full force and effect.

5.6 REMEDIES / DISCLAIMER OF WARRANTY: THE SERVICES, APPARATUS, EQUIPMENT, MATERIALS, SUPPLIES AND WORKMANSHIP PROVIDED IN CONNECTION WITH THIS AGREEMENT ARE ALL PROVIDED ON AN AS IS - WHERE IS, WITH ALL-FAULTS BASIS, AND NO SYSTEM THAT IS PARTICIPATING IN THIS AGREEMENT IS MAKING ANY REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE RELATED THERETO, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, INFRINGEMENT OR INTERFERENCE, OR ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. THE OPERATOR FURTHER AGREES THAT THE REMEDIES STATED HEREIN ARE EXCLUSIVE AND SHALL CONSTITUTE THE SOLE AND EXCLUSIVE REMEDIES FOR ITSELF AND ANY PARTICIPATING SYSTEM.

5.7 Independent Contractor. The Operator is performing services under this Agreement as an independent contractor and shall act as such at all times during the term of this Agreement. The Participating Systems, whether as a Requesting System or Responding

System, shall not act, or be deemed to act, as agents or partners of the other, or be acting in any joint venture under this Agreement. Nothing in this paragraph 14 shall be construed to require the Operator to obtain or maintain a contractor's license.

IN WITNESS WHEREOF, the Operator 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.

OPERATOR: _____

By: _____
Authorized Signer

TITLE: _____

ATTEST: _____

TITLE: _____
Authorized Signer

(SEAL)