

RESOLUTION NO. ____:2019

**RESOLUTION ADOPTING THE COMMONWEALTH OF KENTUCKY STATEWIDE
EMERGENCY MANAGEMENT MUTUAL AID AND ASSISTANCE AGREEMENT**

WHEREAS, the City of Morehead desires to become a party to the Commonwealth of Kentucky Emergency management Mutual Aid and Assistance Agreement for providing and obtaining statewide mutual aid and assistance during a disaster or emergency situation; and

WHEREAS, the Board of City Council has reviewed said proposed Agreement, a copy of which is attached hereto:

NOW, THEREFORE, BE IT RESOLVED, by the Board of City Council of the City of Morehead, Kentucky that the Commonwealth of Kentucky Statewide Emergency Management Mutual Aid and Assistance Agreement is adopted by the City of Morehead.

Passed and adopted by the Board of City Council of the City of Morehead, Kentucky this 11th day of March 2019.

Laura White-Brown, Mayor

ATTEST:

Crissy Cunningham, City Clerk

COMMONWEALTH OF KENTUCKY STATEWIDE EMERGENCY MANAGEMENT MUTUAL AID AND ASSISTANCE AGREEMENT

This agreement, endorsed by the Kentucky Division of Emergency Management, is between each local entity in the Commonwealth of Kentucky that officially approves and adopts the agreement and thereby becomes a party to the agreement. Each party agrees to execute the agreement and provide mutual aid and assistance to other parties under the terms and conditions contained herein.

WHEREAS, the Commonwealth of Kentucky is geographically vulnerable to a variety of emergencies and disasters; and

WHEREAS, the Commonwealth of Kentucky through its Division of Emergency Management recognizes the importance of having each local entity respond in a coordinated and efficient manner to restore the public safety, health, and welfare of a community stricken by an emergency or disaster; and

WHEREAS, the Commonwealth of Kentucky wishes to encourage each local entity in Kentucky to become a party to this agreement to ensure the statewide availability of mutual aid and assistance to disaster or emergency-stricken communities as quickly, efficiently and effectively as possible; and

WHEREAS, under the Kentucky Revised Statutes, a local entity entering into a mutual aid and assistance agreement may include provisions for the furnishing and exchanging of supplies, equipment, facilities, personnel and services; and

WHEREAS, each local entity that has chosen to become a party to this agreement wishes to provide mutual aid and assistance to other parties in time of emergency or disaster;

NOW, THEREFORE, ALL PARTIES TO THIS AGREEMENT AGREE AS FOLLOWS:

SECTION 1. DEFINITIONS

“Agreement” means the Commonwealth of Kentucky Statewide Emergency Management Mutual Aid and Assistance Agreement.

“Aid and assistance” means personnel, equipment, facilities, services, supplies and other resources.

“Authorized representative” means the employee of a party, who has been authorized in writing by that party, to request, to offer, or to otherwise provide aid and assistance under the terms of this agreement.

“Disaster” means any incident or situation declared as such by executive order of the Governor, or the President of the United States pursuant to federal law, as a result of an occurrence or

imminent threat of widespread or severe damage, injury or loss of life or property, resulting from any natural, technological, or man-made emergency situation, including incidents caused by accident, military or paramilitary cause.

“Emergency” means any incident or situation which poses a major threat to public safety so as to cause, or threaten to cause, loss of life, serious injury, significant damage to property, or major harm to public health or the environment and which a local emergency response agency determines is beyond its capabilities.

“Local emergency declaration” means the written document signed by the chief executive officer of a local entity that specifies and attests that a disaster or emergency has occurred and the resulting emergency situation is beyond the capability of the local entity to manage using all local resources within its geographical limits.

“Local emergency management agency” means the organizational unit of a city, county, urban-county, or charter county government, created pursuant to Kentucky Revised Statutes Chapter 39B, with primary jurisdiction, responsibility, and authority for all emergency management program activities within the geographical boundaries of a party.

“Local entity” means a county, urban-county, charter-county, city, or other general or special purpose unit of government created pursuant to the Kentucky Revised Statutes with the express power and authority to enter into and execute a contract.

“Party” means a local entity that has officially approved and adopted this agreement by resolution of its governing body.

“Provider” means a party that furnishes, or is requested to furnish, aid and assistance to a recipient pursuant to this agreement.

“Recipient” means a party that requests or receives aid and assistance from a provider pursuant to this agreement.

SECTION II. INITIAL RECOGNITION OF PRINCIPLES BY ALL PARTIES; AGREEMENT PROVIDES NO RIGHT OF ACTION FOR THIRD PARTIES

As this agreement is a reciprocal contract, it is recognized that any party to this agreement may be requested by another party to be a provider. It is mutually understood that each party’s foremost responsibility is to its own citizens. The provisions of this agreement shall not be construed to impose an unconditional obligation on any party to this agreement to provide aid and assistance pursuant to a request from another party. Accordingly, when a party is requested to provide aid and assistance, it may in good faith deem itself unavailable to be a provider when the resources being requested are necessary to provide reasonable and adequate protection for its own citizens. A party unable to honor a request for aid and assistance will so inform the party initiating a request.

Given the finite resources of any party and the potential for each party to be unavailable for aid and assistance at a given point in time, the parties mutually encourage each other to enlist other local entities in mutual aid and assistance efforts and to enter into such agreements accordingly. Likewise, the parties fully recognize that there is ample public purpose for entering into this agreement, and accordingly shall attempt to render assistance in accordance with the terms of the agreement to the fullest extent possible.

All functions and activities performed under this agreement are hereby declared to be governmental functions. Functions and activities performed under this agreement are carried out for the benefit of the general public and not for the benefit of any specific individual or individuals. Accordingly, this agreement shall not be construed as or deemed to be an agreement for the benefit of any third parties or persons and no third parties or persons shall have any right of action under this agreement for any cause whatsoever. All immunities provided by law shall be fully applicable.

SECTION III. PROCEDURES FOR REQUESTING ASSISTANCE

Mutual aid and assistance shall not be requested unless the resources available within a recipient's disaster or emergency-stricken area are deemed inadequate by a recipient. In these instances, a recipient may request mutual aid and assistance by communicating a request to a provider, indicating the request is made pursuant to this mutual aid agreement. A request shall be followed as soon as practicable by a written confirmation of the request, including a copy of a local emergency declaration and a statement or completed form describing the specific aid and assistance needed. All requests for mutual aid and assistance shall be transmitted by a recipient's authorized representative or local emergency management agency as set forth below. A list of authorized representatives for each party shall be attached to the officially-approved and adopted copy of this agreement. In the event of a change in personnel, unless otherwise notified, the presumption will be that the successor to that position will be the authorized representative.

A. **METHOD OF REQUEST FOR MUTUAL AID & ASSISTANCE:** A recipient shall initiate a request as follows:

1. **REQUESTS ROUTED THROUGH A RECIPIENT'S LOCAL EMERGENCY MANAGEMENT AGENCY:** A recipient may directly contact the local emergency management agency that serves the recipient's geographical area of operation and provide the information referenced in paragraph B of Section III. The local emergency management agency shall then contact provider parties on behalf of a recipient to coordinate the provision of mutual aid and assistance.

2. **REQUESTS MADE DIRECTLY TO PROVIDER:** A recipient may directly contact a provider's authorized representative, setting forth the information referenced in paragraph B of Section III. All communications shall be conducted directly between a recipient and provider. A provider and a recipient using this option shall be responsible for keeping

their respective local emergency management agencies advised of the status of response activities, in a timely manner.

- B. **REQUIRED INFORMATION:** Each request for aid and assistance shall be accompanied by the following information, in writing or by other available means, to the extent known:
1. **Stricken Area and Status:** A general description summarizing the condition of the community (i.e., whether the disaster or emergency is imminent, in progress, or has already occurred) and of the damage sustained to date;
 2. **Services:** Identification of the service function(s) for which assistance is needed and the particular type of assistance needed;
 3. **Infrastructure Systems:** Identification of the type(s) of the public infrastructure system for which assistance is needed and the type of work assistance needed;
 4. **Aid and Assistance:** The amount and type of personnel, equipment, materials and supplies needed and a reasonable estimate of the length of time they will be needed;
 5. **Provider's Traveling Employee Needs:** Unless otherwise specified by a recipient, it is mutually understood that a recipient will provide for the basic needs of provider's traveling employees. A recipient shall pay for all reasonable and documented out-of-pocket costs and expenses of a provider's personnel, including transportation expenses for travel to and from the stricken area. Further, a recipient shall house and feed provider's personnel at the recipient's sole cost and expense. If a recipient cannot provide such food and/or housing at the disaster or emergency area, a recipient shall specify in its request for assistance that self-sustained and supported personnel are needed.
 6. **Facilities:** The need for sites, structures or building outside a recipient's geographical limits to serve as relief centers or staging areas for incoming emergency goods and services; and
 7. **Meeting Time and Place:** An estimated time and a specific place for a representative of a recipient to meet the personnel and resources of any provider.
- C. **STATE AND FEDERAL ASSISTANCE:** A recipient shall be responsible for coordinating all requests for state or federal assistance with the local emergency management agency with jurisdiction.
- D. **List of Authorized Representatives:** The list of Authorized Representatives for each party executing this Agreement shall be attached to the executed copy of this Agreement. In

the event of a change in personnel, unless otherwise notified, the presumption will be that the successor to that position will be authorized representative.

SECTION IV. PROVIDER'S ASSESSMENT OF AVAILABILITY OF RESOURCES AND ABILITY TO RENDER ASSISTANCE

When contacted by a recipient or a local emergency management agency regarding a request for aid and assistance, a provider's authorized representative shall assess the provider's own local situation in order to determine the availability of personnel, equipment and other resources. If a provider's authorized representative determines that the provider has available resources, a provider's authorized representative shall so notify the recipient or the local emergency management agency (whichever communicated the request). A Provider shall submit a written acknowledgement of a request for aid and assistance received from a recipient or a local emergency management agency. The written acknowledgement must indicate a provider's decision to either render aid and assistance or to reject a request and shall be transmitted by the most efficient and practical means to a recipient or a local emergency management agency. A provider's acknowledgement shall contain the following information:

- a. In response to the items contained in the request, a description of the personnel, equipment and other resources available;
- b. The projected length of time such personnel, equipment and other resources will be available to serve a recipient particularly if the period is projected to be shorter than one week (as provided in the "Length of Time for Aid and Assistance" section (Section VI) of this agreement).
- c. The estimated time when the assistance provided will arrive at the location designated by the authorized representative of the recipient; and
- d. The name of the person(s) to be designated as the provider's supervisory personnel (pursuant to the Supervision and Control section (Section V) of this agreement).

When a provider submits a written acknowledgement to a local emergency management agency, the local emergency management agency shall notify a recipient's authorized representative and forward the information received from a provider. A recipient or a local emergency management agency shall respond to a provider's written acknowledgement by executing and returning a copy of the request form to a provider by the most efficient practical means, maintaining a copy for its file.

SECTION V. SUPERVISION AND CONTROL

A provider shall designate supervisory personnel among its employees sent to render aid and assistance to a recipient. As soon as practical, a recipient shall assign work tasks to a provider's

supervisory personnel and, unless specifically instructed otherwise, a recipient shall have the responsibility for coordinating communications between a provider's supervisory personnel and a recipient. A recipient shall provide necessary credentials to a provider's personnel authorizing them to operate on behalf of a recipient.

Based upon the assignments set forth by a recipient, a provider's supervisory personnel shall:

- a. Have the authority to assign work & establish work schedules for a provider's personnel. Further, have direct supervision & control of a provider's personnel, equipment and other resources which shall, at all times, remain with a provider's supervisory personnel. A provider should be prepared to furnish communications equipment sufficient to maintain communications among its respective operating units, and if this is not possible, a provider shall notify a recipient accordingly. It is expressly understood that this may involve a recipient providing radio frequencies to a provider while a provider is assisting a recipient;
- b. Maintain daily personnel time records, material records and a log of equipment hours; and;
- c. Report work progress to a recipient at mutually agreed upon intervals.

SECTION VI. LENGTH OF TIME FOR AID & ASSISTANCE; REVIEWABILITY; RECALL

The duration of a provider's assistance shall be for the period agreed upon by the authorized representatives of a provider and a recipient.

As noted in Section II of this agreement, a provider's personnel, equipment and other resources shall remain subject to recall by a provider to provide for its own citizens if circumstances so warrant. A provider shall make a good faith effort to provide at least twenty-four (24) hours advance notice to a recipient of its (provider's) intent to terminate a mission, unless such notice is not practicable. In such a case, as much notice as is reasonable under the circumstances shall be provided.

SECTION VII. REIMBURSEMENTS

Except as otherwise provided below, it is understood that a recipient shall pay to a provider reasonable and documented expenses incurred by a provider as a result of extending assistance to a recipient. Such reimbursements shall commence 12 hours after the provider support is on scene and the recipient has signed a local emergency declaration. The terms and conditions governing reimbursement for any assistance provided under this agreement shall be in accordance with the following provisions, unless otherwise agreed in writing by a recipient and a provider. A recipient shall be ultimately responsible for reimbursement of all eligible reasonable and documented expenses.

- A. Personnel – During the period of assistance, a provider shall continue to pay its employees according to its then prevailing ordinances, rules and regulations. A recipient shall reimburse a provider for all direct and indirect payroll costs and expenses including travel expenses incurred during the period of assistance, including, but not limited to, employee retirement benefits as provided by Generally Accepted Accounting Principles (GAAP). However, as stated in Section IX of this agreement, a recipient shall not be responsible for reimbursing any amounts paid or due as benefits to a provider's personnel under the terms of the Kentucky Worker's Compensation Law.
- B. Equipment – A provider shall be reimbursed by a recipient for the use of its equipment during the period of assistance according to either a pre-established local or state hourly rate or according to the actual replacement, operation and maintenance expenses incurred. For those instances in which costs are reimbursed by the Federal Emergency Management Agency (FEMA), the FEMA-eligible direct costs shall be determined in accordance with 44C.F.R. 206.228. A provider shall pay for all repairs to its equipment as determined necessary by its on-site supervisor(s) to maintain such equipment in safe and operational condition. At the request of a provider, fuels, miscellaneous supplies and minor repairs may be provided by a recipient, if practical. The total equipment charges to a recipient shall be reduced by the total value of the fuels, supplies and repairs furnished by a recipient and by the amount of any insurance proceeds received by a provider.
- C. Materials and Supplies – A provider shall be reimbursed for the reasonable and documented costs of all materials and supplies furnished by it and used or damaged during the period of assistance, except for the costs of equipment, fuel and maintenance materials, labor and supplies, which shall be included in the equipment rate established in subsection B of Section VII, unless such damage is caused by gross negligence, willful and wanton misconduct, intentional misuse or recklessness of a provider's materials and supplies used by them during the period of assistance. The measure of reimbursement shall be determined in accordance with 44C.F.R. 206.228. In the alternative, the parties may agree that a recipient will replace, with like kind and quality as determined by a provider, the materials and supplies used or damaged. If such an agreement is made, it shall be in writing.
- D. Record Keeping – A recipient or its representative local emergency management agency, and Kentucky Division of Emergency Management personnel shall provide information, directions and assistance for record keeping to a provider's personnel. A provider shall maintain records and submit invoices for reimbursement by a recipient in accordance with the procedures and format used or required by FEMA publications, including 44 C.F.R. Part 13 and applicable Office of Management and Budget (OMB) Circulars.
- E. Payment; Other Miscellaneous Matters as to Reimbursement – The reimbursement costs and expenses with an itemized notice shall be forwarded as soon as practicable after the

costs and expenses are incurred, but not later than sixty (60) days following the period of assistance, unless the deadline for identifying damage is extended in accordance with 44 C.F.R. Part 206. A recipient shall pay the bill or advise of any disputed items, not later than sixty (60) days following the billing date. These time frames may be modified in writing by mutual agreement.

SECTION VIII. RIGHTS & PRIVILEGES OF PROVIDER'S EMPLOYEES

Whenever a provider's employees are rendering aid and assistance pursuant to this agreement, such employees shall retain the same powers, duties, immunities and privileges they would ordinarily possess if performing their duties within the geographical limits of a provider.

SECTION IX. PROVIDER'S EMPLOYEES COVERED AT ALL TIMES BY PROVIDER'S WORKER'S COMPENSATION POLICY

Every person in the service of the state or any of its political subdivisions or agencies, or of any county, city of any class under the contract of hire, express or implied, and every official or officer of those entities, whether elected or appointed, while performing his or her official duties shall be considered an employee of the state. Every person who is a member of a volunteer ambulance service, fire, or police department shall be deemed, for the purpose of this agreement, to be in the employment of the political subdivision of the state where the department is organized. Every person who is a regularly enrolled paid or volunteer member of an emergency management agency, or an emergency management agency-supervised operating unit, or a rescue squad, as established under KRS Chapters 39A to 39E, shall be deemed, for the purpose of this agreement, to be in the employment of the Commonwealth of Kentucky.

SECTION X. IMMUNITY

All activities performed under this agreement are hereby declared to be governmental functions. Neither the parties to this agreement, nor, except in cases of willful misconduct, gross negligence or bad faith, their personnel complying with or reasonably attempting to comply with this agreement or any ordinance, order, resolution, rule or regulation enacted or promulgated pursuant to the provisions of this agreement shall be liable for the death of or injury to persons, or for damage to property as a result of any such activity.

SECTION XI. PARTIES MUTUALLY AGREE TO HOLD EACH OTHER HARMLESS FROM LIABILITY

Each party (as indemnitor) agrees to protect, defend, indemnify and hold the other party (as indemnitee), and its officers, employees and agents, free and harmless from and against any and all losses, penalties, damages, assessments, costs, charges, professional fees and other expenses or liabilities of every kind and arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of actions of every kind in connection with or arising

out of indemnitor's negligent acts, errors and/or omissions. Indemnitor further agrees to investigate, handle respond to, provide defense for and defend any such claims, etc. at indemnitor's sole expense and agrees to bear all other costs and expenses related thereto. 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.

Notwithstanding the foregoing, to the extent that each party does not purchase insurance, it shall not be deemed to have waived its governmental immunity by law.

SECTION XII. ROLE OF THE KENTUCKY DIVISION OF EMERGENCY MANAGEMENT

Under this agreement, the responsibilities of the Kentucky Division of Emergency Management are:

- (1) To serve as the central depository for all locally-approved and adopted agreements, along with the attached listing of a party's authorized representatives and contact information, and to provide this listing to each of the parties on an annual basis;
- (2) To coordinate the provision of mutual aid and assistance to a requesting party, pursuant to the provisions of this agreement;
- (3) To keep a record of all requests for assistance and acknowledgements; and
- (4) To report on the status of ongoing emergency or disaster-related mutual aid and assistance as appropriate.

SECTION XIII. AMENDMENTS

- (1) Approval and adoption of the agreement by the governing body of a party and the signature of a party's chief executive officer; and
- (2) Submission of a copy of an approved and adopted agreement, along with approved minutes of the legally constituted meeting at which the agreement was approved, to the Kentucky Division of Emergency Management.

SECTION XIV. INITIAL DURATION OF AGREEMENT; RENEWAL; TERMINATION

This agreement shall be binding for not less than one (1) year from its effective date, unless terminated upon at least sixty (60) days written notice by a party as set forth below. Thereafter,

this agreement shall continue to be binding upon the parties in subsequent years and shall be considered to renew automatically from year to year, unless terminated by written notification as provided above. A party terminating their participation in this agreement shall submit a copy of their written termination notice to the Director of the Kentucky Division of Emergency Management. A party's termination of this agreement shall not affect a party's reimbursement obligations, or any other liability or obligation incurred under the terms of this agreement. Once a termination is effective, a terminated entity shall no longer be a party to this agreement, but this agreement shall continue to be in force among the remaining parties.

SECTION XV. 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 XVI. SEVERABILITY; EFFECT ON OTHER AGREEMENTS

Should any clause, sentence, provision, paragraph or other part of this agreement be judged by any court or competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this agreement. Each of the parties declares that it would have entered into this agreement irrespective of the fact that any one or more of this agreement's clauses, sentences, provisions, paragraphs or other parts have been so declared invalid. Accordingly, it is the intention of the parties that the remaining portions of this agreement shall remain in full force and effect without regard to the clause(s), sentence(s), provision(s), paragraph(s) or other part(s) invalidated.

In the event that parties to this agreement have entered into other mutual aid and assistance contracts, those parties agree that to the extent a request for mutual assistance is made pursuant to this agreement, those other mutual aid and assistance contracts are superseded by this agreement.

SECTION XVII. EFFECTIVE DATE, APPROVAL AND ADOPTION

Part I. This agreement shall take effect upon approval and adoption of the following resolution by the entity seeking to become a party to the agreement.

BE IT RESOLVED BY Board of City Council, OF City of Morehead
(Governing Body of City) (City or County)

That the Commonwealth of Kentucky Statewide Emergency Management Mutual Aid and Assistance Agreement is hereby approved and adopted, and

THAT Laura White-Brown, Mayor
(Name of Primary Representative) (Official Title)

AND Derrick Blevins, Chief of Police
(Name of Alternate Representative) (Official Title)

Are hereby authorized to execute the agreement and to request, offer, or otherwise provide aid and assistance under the terms of the agreement for and on the behalf of the City of Morehead, a public entity established under the laws of the Commonwealth of Kentucky and to file a copy of this resolution with the Kentucky Division of Emergency Management for the purpose of entering into the agreement and thereby become a party to the Commonwealth of Kentucky Statewide Emergency Management Mutual Aid and Assistance Agreement.

Passed and approved this 11th day of March, 2019.

Laura White-Brown, Mayor
Name and Title

Derrick E. Blevins, Chief of Police
Name and Title

CERTIFICATION

I, Crissy Cunningham, duly appointed City Clerk, of the City of Morehead, do hereby certify that
(Title) (Entity)

The above is a true and correct copy of a resolution passed and approved by the City of Morehead, on the 11th day of March 2019.

City Clerk
(Official Position)

(Signature)

COMMONWEALTH OF KENTUCKY STATEWIDE

EMERGENCY MANAGEMENT MUTUAL AID AND ASSISTANCE AGREEMENT

Part II. List of Authorized Representative to Contact for Emergency Assistance

For: City of Morehead
(Political Subdivision)

PRIMARY REPRESENTATIVE:

Name: Derrick E. Blevins Title: Chief of Police
Address: 105 East Main Street City: Morehead State: KY
Zip Code: 40351 Phone: (606) 784-7511 Fax: (606) 783-1837
E-Mail: dblevins@cityofmorehead.net Cell: (606) 776-8213

ALTERNATE REPRESENTATIVE:

Name: Laura White-Brown Title: Mayor
Address: 314 Bridge Street City: Morehead State: KY
Zip Code: 40351 Phone: (606) 784-8505 Fax: (606) 784-2216
E-mail: mayor.whitebrown@morehead-ky.gov Cell: (606) 776-6650

Part III.

IN WITNESS WHEREOF, the Kentucky division of Emergency Management has endorsed this agreement and the Party to Agreement listed above has caused this Commonwealth of Kentucky Statewide Emergency Management Mutual Aid and assistance Agreement to be duly adopted in its name and on its behalf by its Chief Executive Officer, who has signed accordingly and attested with approval of its governing body, as of the date set forth in this agreement.

BY: _____, Director, Kentucky Division of Emergency Management

DATE: _____