RESOLUTION No. 545-22

A RESOLUTION APPROVING THE MUTUAL AID AGREEMENT BETWEEN THE CITY OF DONALD AND THE OREGON WATER/WASTEWATER AGENCY RESPONSE NETWORK

WHEREAS, the City of Donald and Oregon Water/Wastewater Agency Response Network (ORWARN) have authority to enter into a Mutual Aid Agreement to establish a collaborative written agreement for the sharing of emergency resources among water and wastewater agencies under the provisions of a program consistent with the National Incident Management System (NIMS);

WHEREAS, ORWARN works to support and promote statewide emergency preparedness, disaster response, and, mutual aid assistance matters for the public and private water and wastewater utilities in the case of either natural or manmade events;

WHEREAS, an emergency equipment database is being developed by ORWARN that matches utility resources to a member's needs during and emergency and it is in the best interest of the City to support these efforts to enhance the dependability and resiliency of a network for emergency mutual assistance;

WHEREAS, the City of Donald City Council agrees that the sharing of utility resources during an emergency is an important endeavor that protects the community in times of crisis;

WHEREAS, the City Council recommends that the City join ORWARN as Member Utility status and list emergency equipment and trained personnel available for use by other members during and emergency;

WHEREAS, Resolution No. 375-15 authorizes the Mayor and City Manager to sign mutual aid agreements with prior approval from the Donald City Council;

WHEREAS, the City Council desires to enter into such agreement attached as Exhibit A; and

NOW, THEREFORE, THE CITY OF DONALD RESOLVES AS FOLLOWS:

Section 1. The Donald City Council approves the mutual aid agreement between the City and ORWARN for the purpose of mutual aid assistance for water and wastewater utilities during time of emergency .

PASSED and ADOPTED by the City Council of the City of Donald at their regular meeting on this 11th day of January 2022 by the vote of ___ ayes and ___ nays.

DATE: January 11, 2022

Rick Olmsted, Mayor

ATTEST by City Manager this 11th day of January 2022

Eric Underwood, ~~Interim~~ City Manager

MUTUAL AID AND ASSISTANCE AGREEMENT FOR THE PROVISION OF EMERGENCY SERVICES RELATED TO WATER AND WASTEWATER UTILITIES

This Mutual Aid and Assistance Agreement ("Agreement") establishes a Mutual Aid Assistance Program among signatories to this Agreement, and contains procedures and standards for a water and wastewater utility Mutual Aid and Assistance Program.

AGREEMENT

This Agreement is entered into by the Members that have, by executing this Agreement, manifested their intent to enter into a Mutual Aid and Assistance Program through the Oregon Water/Wastewater Agency Response Network (ORWARN). Associate Members may also become affiliated with ORWARN by executing this Agreement. A list of all Members and Associate members shall be maintained by the Governing board and is available upon request from a Governing Board.

ARTICLE I.
PURPOSE

Recognizing that emergencies may require assistance in the form of personnel, equipment, and supplies from outside the area of impact, the Members hereby establish a Mutual Aid and Assistance Program. Through the Mutual Aid and Assistance Program, Members may, in their discretion, coordinate response activities and share resources during emergencies. This Agreement sets forth the procedures and standards for the administration of the Mutual Aid and Assistance Program.

ARTICLE II.
DEFINITIONS

A. Associate Members Any public or private entity that desires to be affiliated with ORWARN may become an Associate Member. Associate Members may attend board meetings, attend general membership meetings, attend training exercises, receive general information regarding the organization and participate in other activities deemed appropriate by the Governing Board. Associate Members may not request assistance or respond to a request for assistance under the Agreement. Further, Associate Members may not vote and

are ineligible to serve on the Governing board.

B. Authorized Official Employees or officers of a Member that are authorized to: (1) request assistance; (2) offer assistance; (3) refuse to offer assistance or (4) withdraw assistance under this Agreement.

C. Confidential Information Any document shared with any signatory of this Agreement that is marked confidential, including but not limited to any map, report, notes, papers, opinion, or e-mail which relates to the system vulnerabilities of a Member.

D. Emergency Any human caused or natural event or circumstance causing, or imminently threatening to cause, loss of life, injury to person or property, human suffering or financial loss, and includes, but is not limited to, fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills or releases of oil or hazardous material as defined in ORS 466.605, contamination, utility or transportation emergencies, disease, blight, infestation, civil disturbance, riot, intentional acts, sabotage and war that is, or could reasonably be believed to be beyond the control of the services, personnel, equipment, and facilities of a Member.

E. Member Any municipal corporation, quasi-municipal corporation, department or agency of a municipal corporation, department or agency of a quasi-municipal corporation, service district, political subdivision or private utility company that participates in the Mutual Aid and Assistance Program by executing this Agreement. If any municipal corporation, quasi-municipal corporation, department or agency of a municipal corporation, department or agency of a quasi-municipal corporation, service district, political subdivision or private utility company has separate water and wastewater operations, each one, if contracting separately, shall be deemed to be a Member for purposes of this Agreement.

F. National Incident Management System (NIMS) A national, standardized approach to incident management and response that sets uniform processes and procedures for emergency response operations.

G. Non-Responding Member A Member that does not provide assistance during a Period of Assistance under the Mutual Aid and Assistance Program.

H. Period of Assistance A period of time during which a Responding Member assists a Requesting Member. The period commences when personnel, equipment, or supplies depart from a Responding Member's facility and ends when the Responding Member no longer supplies personnel, equipment, supplies or services to the Requesting Member.

I. Requesting Member A Member that requests assistance under the Mutual Aid and Assistance Program.

J. Responding Member A Member that responds to a request for assistance under the Mutual Aid and Assistance Program.

ARTICLE III.
ADMINISTRATION

A. A Governing Board shall be established to organize and maintain the Mutual Aid and Assistance Program. The Governing Board shall be elected by ballot by a majority vote of the Members of this Agreement. Each Member shall have one vote. Associate Members are ineligible to vote and may not serve on the Governing Board.

B. The Governing Board shall consist of 5 Members. The Governing Board will elect the following officers: a Chair; a Vice Chair; and a Secretary. The term of all board members shall be 2 years, except that in the first year the Agreement is in effect, the term of the Vice Chair and other board members shall be 1 year. A quorum shall be a majority of the Members of the Governing Board.

C. The Governing Board shall meet at least twice each year, at a meeting place designated by the Governing Board. The Governing Board may make, establish and alter rules and regulations for its procedure consistent with generally recognized principles of parliamentary procedure. The Governing Board shall have the power to carry out the purposes of this Agreement, including but not limited to the power to: adopt bylaws; develop specific procedures and protocol for requesting assistance; develop specific procedures and protocol for responding to a request for assistance; organize meetings; operate a website; disseminate information; create informational brochures; create subcommittees; maintain membership lists; maintain equipment and supply inventory lists; and deal with membership issues.

ARTICLE IV.
REQUESTS FOR ASSISTANCE

A. Member Responsibility: Members shall designate Authorized Official(s); provide contact information including emergency 24-hour contact information; and maintain resource information made available by the utility for mutual aid and assistance response. Such information shall be updated annually or when changes occur and provided to the Governing Board.

In the event of an Emergency, a Member's Authorized Official may request mutual aid and assistance from a participating Member. Requests for assistance can be made orally or in writing. When made orally, the request for

personnel, equipment, and supplies shall be provided in writing as soon as practicable. Requests for assistance shall be directed to the Authorized Official of the participating Member. The Governing Board shall develop specific protocols for requesting aid in bylaws, as amended from time to time.

B. Response to a Request for Assistance: After a Member receives a request for assistance, the Authorized Official evaluates whether resources are available to respond to the request for assistance. Following the evaluation, the Authorized Official shall inform, as soon as possible, the Requesting Member whether it has the resources to respond. If the Member is willing and able to provide assistance, in its sole discretion, the Member shall inform the Requesting Member about the type of available resources and the approximate arrival time of such assistance.

C. Discretion of Responding Member's Authorized Official: Execution of this Agreement does not create any duty to respond to a request for assistance. When a Member receives a request for assistance, the Authorized Official shall have sole and absolute discretion as to whether or not to respond to the request, and the availability of resources to be used in any such response. All Authorized Official's decisions on the availability of resources shall be final unless overridden by the Member's governing body.

ARTICLE V.
RESPONDING MEMBER PERSONNEL

A. National Incident Management System: When providing assistance under this Agreement, the Requesting Member and Responding Member will use the organizational principles set forth in the National Incident Management System.

B. Control: Responding Member personnel shall remain under the direction and control of the Responding Member. The Requesting Member's Authorized Official shall coordinate response activities with the designated supervisor(s) of the Responding Member(s). Whenever practical, Responding Member personnel must be self sufficient for up to 72 hours.

C. Food and Shelter: When possible, the Requesting Member shall supply reasonable food and shelter for Responding Member personnel. If the Requesting Member does not provide food and shelter for responding personnel, the Responding Member's designated supervisor is authorized to secure the resources reasonably necessary to meet the needs of its personnel. Except as provided for below, the cost for such resources must not exceed the State per diem rates for that area. To the extent Food and Shelter costs exceed the State per diem rates for the area, Responding Member must demonstrate that the additional costs were reasonable and necessary under the circumstances. Unless otherwise agreed to in writing, the Requesting Member remains

responsible for reimbursing the Responding Member for all reasonable and necessary costs associated with providing food and shelter, if such resources are not provided.

D. Communication: The Requesting Member shall provide Responding Member personnel with radio equipment as available, or radio frequency information to program existing radio equipment, in order to facilitate communications with local responders and utility personnel.

E. Licenses and Permits: To the extent permitted by law, Responding Member personnel who hold valid licenses, certificates, or permits evidencing professional, mechanical, or other skills shall be allowed to carry out activities and tasks relevant and related to their respective credentials during the specified Period of Assistance.

F. Right to Withdraw: The Responding Member's Authorized Official retains the right to withdraw some or all of its resources at any time for any reason in the Responding Member's sole and absolute discretion. Responding Member(s) shall have no liability from a decision to withdraw. Notice of intention to withdraw must be communicated to the Requesting Member's Authorized Official as soon as is practicable under the circumstances.

ARTICLE VI
COST REIMBURSEMENT

A. Cost Reimbursement: Unless otherwise mutually agreed by the Requesting Member and the Responding Member, the Requesting Member shall reimburse the Responding Member for each of the following categories of costs incurred while providing aid and assistance during the Period of Assistance.

B. Personnel Costs: Responding Member personnel costs shall be the amount to be paid for work performed by the Responding Member's personnel during a Period of Assistance under the terms and conditions of the Responding Member's individual employment contracts with such personnel. The Responding Member's designated supervisor(s) shall keep accurate records of work performed by personnel during the Period of Assistance. Requesting Member reimbursement to the Responding Member shall include all personnel costs incurred by the Responding Member, including, but not limited to, salaries or hourly wages, costs for fringe benefits, and indirect costs.

C. Costs of Equipment: The Requesting Member shall reimburse the Responding Member for the use of equipment during a Period of Assistance, including, but not limited to, reasonable rental rates, all fuel, lubrication, maintenance, transportation, and loading/unloading of loaned equipment. All

equipment shall be returned to the Responding Member as soon as is practicable and reasonable under the circumstances. Generally, rates for equipment use will be based on the Federal Emergency Management Agency's (FEMA) Schedule of Equipment Rates. If a Responding Member uses rates different from those in the FEMA Schedule of Equipment Rates, the Responding Member must provide such rates orally or in writing to the Requesting Member prior to supplying equipment. Mutual agreement on which rates are used must be reached in writing prior to dispatch of the equipment. Reimbursement for equipment not referenced on the FEMA Schedule of Equipment Rates must be developed based on actual recovery of costs. In the event loaned equipment is damaged while being dispatched to Requesting Member, or while used during a Period of Assistance, and such damage is not due to negligence or intentional acts of the Responding Member, Requesting Member shall reimburse Responding Member for the reasonable cost of repairing such damaged equipment. If the damaged equipment cannot be repaired, then Requesting Member shall reimburse Responding Member for the reasonable cost of replacing such damaged equipment with equipment that is of equivalent age, condition and of at least equal capability. If Responding Member must lease a piece of equipment while its equipment is being repaired, Requesting Member shall reimburse Responding Member for such rental costs.

D. Costs of Materials and Supplies: The Requesting Member must reimburse the Responding Member in kind or at actual replacement cost, plus handling charges, for Responding Member's use of expendable or non-returnable supplies during the Period of Assistance. The Responding Member must not charge direct fees or rental charges to the Requesting Member for supplies and reusable items that are returned to the Responding Member in a clean, damage-free condition. Reusable supplies that are returned to the Responding Member with damage shall be treated as expendable supplies or non-returnable for purposes of cost reimbursement.

E. Payment Period: The Responding Member must provide an itemized bill to the Requesting Member for all expenses incurred by the Responding Member in providing assistance under this Agreement, not later than ninety (90) days following the end of the Period of Assistance. The Responding Member may request additional periods of time within which to submit the itemized bill, and Requesting Member shall not unreasonably withhold consent to such request. The Requesting Member shall pay the bill in full on or before the forty-fifth (45th) day following the billing date. The Requesting Member may request additional periods of time within which to pay the itemized bill, and Responding Member shall not unreasonably withhold consent to such request, provided, however, that all payment shall occur not later than one-year after the date a final itemized bill is submitted to the Requesting Member.

F. Records: Each Responding Member and their duly authorized representatives shall have access to a Requesting Member's books, documents, notes, reports, papers and records which are directly pertinent to this Agreement for the purposes of reviewing the accuracy of a cost bill or making a financial, maintenance or regulatory audit. Each Requesting Member and their duly authorized representatives shall have access to a Responding Member's books, documents, notes, reports, papers and records which are directly pertinent to this Agreement for the purposes of reviewing the accuracy of a cost bill or making a financial, maintenance or regulatory audit. Such records shall be maintained for at least three (3) years or longer where required by law.

ARTICLE VII.
DISPUTES

If a dispute arises between Members under this Agreement, the disputing Members shall first attempt to resolve the dispute by negotiation, followed by mediation and finally by filing an action in a court of competent jurisdiction.

Step One: The disputing Members shall authorize a person ("Authorized Official") to negotiate on their behalf. If the dispute is resolved at this step, there shall be a written determination of such resolution, signed the disputing Members' Authorized Official and ratified by each governing body, if required. Step One will be completed when notice is delivered in writing to all disputing Members.

Step Two: If the dispute cannot be resolved within fifteen (15) business days at Step One, the disputing Members shall submit the matter to mediation. The disputing Members shall attempt to agree on a mediator. If they cannot agree, the disputing Members shall request a list of five (5) mediators from an entity or firm providing mediation services. The disputing Members will mutually agree on a mediator from the list provided. If the disputing Members cannot mutually agree upon a mediator, the disputing Members shall alternatively strike one name from the list until one mediator remains. The remaining mediator shall be the mediator for the dispute. Any common costs of mediation shall be borne equally by the disputing Members who shall each bear their own costs and fees. If the issue is resolved at this step, a written determination of such resolution shall be signed by each Authorized Official and ratified by their respective governing bodies, if necessary.

Step Three: If the disputing Members are unsuccessful at Steps One and Two, the dispute shall be resolved by a State of Oregon

court of competent jurisdiction. Venue shall be in the jurisdiction of the Responding Member, subject to statutory limitations.

ARTICLE VIII.
DUTY OF REQUESTING MEMBERS TO INDEMNIFY

Subject to the Oregon Constitution, the limits imposed under the Oregon Tort Claims Act, and laws of the state of Oregon applicable to local governments, the Requesting Member shall assume the defense of, fully indemnify, save and hold harmless, all Members, and their board, directors, commissioners, officers, agents and employees, from all claims, suits, actions, loss, damage, injury, and liability of every kind, nature, and description, directly or indirectly arising from any Responding Member's act or omission during a specified Period of Assistance, except for claims arising out of the willful misconduct or gross negligence of a Responding Member, its board, directors, commissioners, officers, agents and employees.

ARTICLE IX.
SIGNATORY INDEMNIFICATION

To the extent not addressed in Article VIII, and subject to the Oregon Constitution and limits imposed under the Oregon Tort Claims Act, a Requesting Member shall have a duty to defend, indemnify, save and hold harmless all Non-Responding Members and Associate Members, their officers, agents and employees from any liability, claim, demand, action, or proceeding of whatever kind or nature arising out of a Period of Assistance.

ARTICLE X.
WORKER'S COMPENSATION CLAIMS

Each Responding Member shall provide worker's compensation benefits and administering worker's compensation for its own personnel.

ARTICLE XI.
NOTICE

A Member or Associate Member that becomes aware of a claim or suit that in any way, directly or indirectly, contingently or otherwise, affects or might affect other Members or Associate Members of this Agreement shall provide prompt and timely notice to the Members or Associate Members that may be affected by the suit or claim. Each Member and Associate Member reserves the right to participate in the defense of such claims or suits as necessary to protect its own interests.

ARTICLE XII.
INSURANCE

Members and Associate Members of this Agreement shall maintain an appropriate insurance policy or maintain a self-insurance program that covers activities that it may undertake by virtue of membership in the Mutual Aid and Assistance Program.

ARTICLE XIII
CONFIDENTIAL INFORMATION

To the extent provided by law, Members and Associate Members shall maintain in the strictest confidence and shall take all reasonable steps necessary to prevent the disclosure of any Confidential Information disclosed under this Agreement. If any Member, Associate Member, third party or other entity requests or demands, by subpoena or otherwise, that a Member or Associate Member disclose any Confidential Information disclosed under this Agreement, the Member or Associate Member shall immediately notify the owner of the Confidential Information and shall take all reasonable steps necessary to prevent the disclosure of any Confidential Information by asserting all applicable rights and privileges with respect to such information and shall cooperate fully in any judicial or administrative proceeding relating thereto.

ARTICLE XIV.
EFFECTIVE DATE AND PROCESS TO ADD NEW MEMBERS

This Agreement shall be effective after two (2) or more entities' authorized representatives execute the Agreement. Membership shall become effective upon executing this Agreement. A list of all Members and Associate Members shall be maintained by the Governing board and is available upon request from a Governing Board.

ARTICLE XV.
TERM

Unless restricted by Oregon statutes, municipal Charters and corporate Charters, the term of this Agreement shall be for 5 years and shall be automatically renewed for additional terms of five years each, unless terminated by Majority vote of the Governing Board. Termination of this Agreement shall in no way affect a Requesting Member's duty to reimburse a Responding Member for cost incurred during a Period of Assistance, or for any other costs voluntarily incurred during the withdrawing Member's membership, which duty shall survive such

termination.

ARTICLE XVI.
WITHDRAWAL

A Member or Associate Member may withdraw from this Agreement by providing written notice of its intent to withdraw to the Governing Board. Withdrawal takes effect 60 days after the Governing Board receives notice. Withdrawal from this Agreement shall in no way affect a Requesting Member's duty to reimburse a Responding Member for cost incurred during a Period of Assistance, which duty shall survive such withdrawal.

ARTICLE XVII.
MODIFICATION

No provision of this Agreement may be modified, altered, or rescinded by individual Members or Associate Members of the Agreement. Modifications (except Modifications to Article III and Article XVII) require a majority vote of the Members of the Governing Board (3) or a majority vote of the Members of this Agreement. Modifications to Article III and Article XVII require a majority vote of the Members to this Agreement. Approved modifications take effect 60 days after the date upon which notice is sent to the Members, except that the addition of a new Member or Associate Member becomes effective upon execution of this Agreement.

ARTICLE XVIII.
NO THIRD PARTY BENEFICIARIES

The signatories to this Agreement are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

ARTICLE XIX.
WAIVER

No provision of this Agreement may be waived except in writing by the Member waiving compliance. No waiver of any provision of this Agreement shall constitute waiver of any other provision, whether similar or not, nor shall any one waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or of any other

provision.

ARTICLE XX.
SEVERABILITY

The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

ARTICLE XXI.
EXECUTION IN COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, an authorized representative of a Member or Associate Member has duly executed this Mutual Aid and Assistance Agreement as of the date referenced below. An ORWARN representative will acknowledge receipt of the Mutual Aid and Assistance Agreement and return a copy to the Member or Associate Member.

MEMBER

APPROVED AS TO FORM:

By: Eric Underwood

Date: 1/12/2022

Title: City Manager

Print Name Eric Underwood

ASSOCIATE MEMBER

APPROVED AS TO FORM:

By:_____

Date: _____

Title:_____

Print Name _____

Affiliation or Interest in water / wastewater industry_____

ORWARN ACKNOWLEDGMENT

By:_____

Date: _____

Title:_____

Print Name _____