New Mexico Mutual Aid and Assistance Agreement
Water/Wastewater Agency Response Network (NMWARN)

AGREEMENT

This Agreement is made and entered into by public and private Water and Wastewater Utilities that have, by executing this Agreement, manifested their intent to participate in an Intrastate Program for Mutual Aid and Assistance.

Statutory Authority – This Agreement is authorized under the Intrastate Mutual Aid Act (12-10B-1 NMSA 1978) which provides that Water and Wastewater Utilities may contract with each other to provide services.

ARTICLE I
PURPOSE

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

ARTICLE II
DEFINITIONS

A. Authorized Official – An employee or officer of a Member utility that is authorized to:
   1. Request assistance;
   2. Offer assistance;
   3. Refuse to offer assistance, and/or
   4. Withdraw assistance under this agreement.

B. Emergency – A natural or human-caused 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, contamination, utility or transportation emergencies, disease, blight, infestation, civil disturbance, riot, intentional acts, sabotage and war that is, or could reasonably be beyond the capability of the services, personnel, equipment, and facilities of a Mutual Aid and Assistance Program Member to fully manage and mitigate internally.

C. Members – Entities participating in the NMWARN fall into one or more of the following categories:
   1. Regular Member – Any public or private Water or Wastewater Utility that manifests intent to participate in the Mutual Aid and Assistance Program by executing this Agreement.
   2. Associate Member – Any non-utility participant, approved by the NMWARN Committee,
that provides a support role for the NMWARN program (for example state agencies or associations) and do not officially sign this NMWARN agreement.

3. Requesting Member – A Regular Member who requests aid or assistance under the Mutual Aid and Assistance Program.

4. Responding Member – A Regular Member that responds to a request for aid or assistance under the Mutual Aid and Assistance Program.

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

D. 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 or Associate Member.

E. Period of Assistance – A specified period of time when a Responding Member assists a Requesting Member. The period commences when personnel, equipment, or supplies depart from Responding Member’s home base and ends when the resources return to their home base (portal to portal). All protections identified in the agreement apply during this period. The specified Period of Assistance may occur during response to or recovery from an emergency, as previously defined.

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.

ARTICLE III
ADMINISTRATION

A. The Mutual Aid and Assistance Program shall be administered through a statewide NMWARN Committee. The purpose of the NMWARN Committee is to provide coordination of response activities of the Mutual Aid and Assistance Program before, during, and after an emergency. The NMWARN Committee, under the leadership of an elected Chairperson, shall meet at least annually to address Mutual Aid and Assistance Program issues, and to review emergency preparedness and response procedures.

B. The NMWARN Committee shall consist of seven members, representing:

1. A Regular Member water system serving a population of 10,000 persons or greater
2. A Regular Member water system serving a population of less than 10,000 persons
3. A Regular Member wastewater system
4. A Regular Member at-large water or wastewater system
5. The New Mexico Environment Department, Drinking Water Bureau
7. The New Mexico Rural Water Association
ARTICLE IV
PROCEDURES

The NMWARN Committee shall develop operational and planning procedures for the Mutual Aid and Assistance Program in coordination with members and state emergency management and public health officials. These procedures shall be reviewed at least annually and updated as needed by the NMWARN Committee.

ARTICLE V
REQUESTS FOR ASSISTANCE

A. Member Responsibility: Members shall identify an Authorized Official and alternates; provide contact information (including 24-hour access or best available) and maintain resource information that may be available from the utility for mutual aid and assistance response. Such contact information shall be updated annually or when changes occur, provided to the NMWARN Committee.

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 prepared in writing as soon as practicable. Requests for assistance shall be directed to the Authorized Official of the participating Member. Specific protocols for requesting aid shall be provided in the required procedures (Article IV).

B. Response to a Request for Assistance – Members of the agreement are not obligated to respond to a request. After a Member receives a request for assistance, the Authorized Official evaluates whether or not to respond, whether resources are available to respond, or if other circumstances would hinder response. Following the evaluation, the Authorized Representative shall inform, as soon as possible, the Requesting Member whether it will respond. If the Member is willing and able to provide assistance, 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, or the availability of resources to be used in such response. An Authorized Member’s decisions on the availability of resources shall be final.

ARTICLE VI
RESPONDING MEMBER PERSONNEL

A. National Incident Management System - When providing assistance under this Agreement, the Requesting Utility and Responding Utility shall be organized and shall function under the National Incident Management System.

B. Control - While employees so provided may be under the supervision of the Responding Member, the Responding Member’s employees come under the direction and control of the Requesting Member, consistent with the NIMS Incident Command System to address the
needs identified by the Requesting Member. The Requesting Member’s Authorized Official
shall coordinate response activities with the designated supervisor(s) of the Responding
Member(s). The Responding Member’s designated supervisor(s) must keep accurate
records of work performed by personnel during the specified Period of Assistance.

C. Food and Shelter – Whenever practical, Responding Member personnel must be self-
sufficient for up to 72 hours. When possible, the Requesting Member shall supply
reasonable food and shelter for Responding Member personnel. If the Requesting Member
is unable to provide food and shelter for Responding personnel, the Responding Member’s
designated supervisor is authorized to secure the resources necessary to meet the needs of
its personnel. Except as provided 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, the 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, in order to facilitate
communications with local responders and utility personnel.

E. Status - Unless otherwise provided by law, the Responding Member’s officers and
employees retain the same privileges, immunities, rights, duties and benefits as provided in
their respective jurisdictions.

F. Licenses and Permits – To the extent permitted by law, Responding Member personnel that
hold 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.

G. 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. Notice of intention to withdraw must be
communicated to the Requesting Member’s Authorized Official and the NMWARN
Committee as soon as is practicable under the circumstances.

ARTICLE VII
COST- REIMBURSEMENT

The Requesting Member shall reimburse the Responding Member for each of the following
categories of costs incurred during the specified Period of Assistance as agreed in whole or in
part by both parties; provided, that any Responding Member may assume in whole or in part
such loss, damage, expense, or other cost, or may loan such equipment or donate such
services to the Requesting Member without charge or cost.

A. Personnel – The Responding Member shall be reimbursed by the Requesting Member for
personnel costs incurred for work performed during the specified Period of Assistance.
Responding Member personnel costs shall be calculated according to the terms provided in
their employment contracts or other conditions of employment. The Responding Member’s
designated supervisor(s) must keep accurate records of work performed by personnel during the specified Period of Assistance. Requesting Member reimbursement to the Responding Member could consider all personnel costs, including salaries or hourly wages, overtime, costs for fringe benefits, indirect costs and outside professional services.

B. Equipment – The Requesting Member shall reimburse the Responding Member for the use of equipment during the specified 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 in good working order as soon as is practicable and reasonable under the circumstances. As a minimum, rates for equipment use must 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 the equipment. Mutual agreement on which rates are used must be reached prior to dispatch of the equipment, and confirmed in writing within one week after 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. 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.

C. Materials and Supplies – The Requesting Member must reimburse the Responding Member in kind or at actual replacement cost, plus handling charges, for use of expendable or non-returnable supplies. The Responding Member must not charge direct fees or rental charges to the Requesting Member for other 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 must be treated as expendable supplies for purposes of cost reimbursement.

D. Payment Period – The Responding Member must provide an itemized bill to the Requesting Member for all expenses incurred by the Responding Member while providing assistance under this Agreement. The Responding Member must send the itemized bill not later than (90) ninety dates 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 must pay the bill in full on or before the forty-fifth (45th) day following the billing date. Unpaid bills shall become delinquent upon the forty-sixth (46th) day following the billing date, and once delinquent shall accrue interest at the rate of prime plus two percent (2%) per annum as reported by the Wall Street Journal.

E. 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 VIII
DISPUTES

If any controversy or claim arises out of, or relates to, the execution of the Agreement, including, but not limited to, alleged breach of the Agreement, the disputing Members shall first attempt to resolve the dispute by negotiation, followed by mediation and finally shall be settled by binding arbitration before a panel of three (3) persons chosen from the Regular Members of this Mutual Aid Agreement which are participating utilities, excluding those members who are parties to the dispute.

Each party to the dispute shall choose one panel member and those panel members shall agree on one additional panel member.

The arbitration panel shall adopt rules of procedure and evidence in accordance with the Rules of the American Arbitration Association, shall determine all issues in dispute by majority vote and shall assess damages. The decision of the arbitration panel shall be final and binding upon the parties to the dispute. Any court of competent jurisdiction may enter the judgment rendered by the arbitrators as final judgment that is binding on the parties.

ARTICLE IX
REQUESTING MEMBER’S DUTY TO INDEMNIFY

The Requesting Member shall assume the defense of, fully indemnify and hold harmless, the Responding Member, its officers and employees, from all claims, loss, damage, injury and liability of every kind, nature and description, directly or indirectly arising from Responding Member’s work during a specified Period of Assistance. The scope of the Requesting Member’s duty to indemnify includes, but is not limited to, suits arising from, or related to, negligent or wrongful use of equipment or supplies on loan to the Requesting Member, or faulty workmanship or other negligent acts, errors or omissions by Requesting Member or the Responding Member personnel.

The Requesting Member’s duty to indemnify is subject to, and shall be applied consistent with, the conditions set forth in Article X.

ARTICLE X
SIGNATORY INDEMNIFICATION

In the event of a liability, claim, demand, action, or proceeding of whatever kind or nature arising out of a specified Period of Assistance, the Members who receive and provide assistance shall have a duty to defend, indemnify, save and hold harmless all Non-Responding 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 XI
WORKER’S COMPENSATION CLAIMS

The Responding Member is responsible for providing worker’s compensation benefits and administering worker’s compensation for its employees. The Requesting Member is responsible for providing worker’s compensation benefits and administering worker’s compensation for its employees.

ARTICLE XII
NOTICE

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

ARTICLE XIII
INSURANCE

Members of this Agreement shall maintain an 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 XIV
CONFIDENTIAL INFORMATION

To the extent provided by law, any Member or Associate Member 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 XV
EFFECTIVE DATE

This Agreement shall be effective after the Water and Wastewater Utility’s authorized representative executes the Agreement and the NMWARN Committee Chair receives the Agreement. The NMWARN Committee Chair shall maintain a master list of all members of the Mutual Aid and Assistance Program.
ARTICLE XVI
WITHDRAWAL

A Member may withdraw from this Agreement by providing written notice of its intent to withdraw to the NMWARN Committee Chair. Withdrawal takes effect 60 days after the appropriate officials receive 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 parties to the Agreement. Modifications to this Agreement may be due to programmatic operational changes to support the agreement, legislative action, creation of an interstate aid and assistance agreement, or other developments. Modifications require a simple majority vote of Regular Members of the NMWARN. The NMWARN Committee Chair must provide written notice to all Members of approved modifications to this Agreement. Approved modifications take effect 60 days after the date upon which notice is sent to the Members.

ARTICLE XVIII
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 XIX
PRIOR AGREEMENTS

This Agreement supersedes all prior Agreements between Members to the extent that such prior Agreements are inconsistent with this Agreement.

ARTICLE XX
PROHIBITION ON THIRD PARTIES AND ASSIGNMENT OF RIGHTS/DUTIES

This Agreement is for the sole benefit of the Members and no person or entity must have any rights under this Agreement as a third party beneficiary. Assignments of benefits and delegations of duties created by this Agreement are prohibited and must be without effect.
ARTICLE XXI
INTRASTATE AND INTERSTATE MUTUAL AID AND ASSISTANCE PROGRAMS

To the extent practicable, Members of this Agreement shall participate in Mutual Aid and Assistance activities conducted under the State of New Mexico Intrastate Mutual Aid and Assistance Program and the Interstate Emergency Management Assistance Compact (EMAC). Members may voluntarily agree to participate in an interstate Mutual Aid and Assistance Program for water and wastewater utilities through this Agreement if such a Program were established.

Now, therefore, in consideration of the covenants and obligations set forth in this Agreement, the Water and Wastewater Utility listed here manifests its intent to be a Member of the New Mexico Intrastate Mutual Aid and Assistance Program for Water and Wastewater Utilities by executing this Agreement on this _______________ day of _________________, 20______.

Water/Wastewater Utility:______________________________

By: ______________________  
Title: ______________________

Please Print Name

Approved as to form and legality

By: ______________________  
Attorney for Utility

Please Print Name