

1 that provides a support role for the NMWARN program (for example state agencies or
2 associations) and do not officially sign this NMWARN agreement.

- 3 3. Requesting Member – A Regular Member who requests aid or assistance under the
4 Mutual Aid and Assistance Program.
- 5 4. Responding Member – A Regular Member that responds to a request for aid or
6 assistance under the Mutual Aid and Assistance Program.
- 7 5. Non-Responding Member - A Regular Member that does not provide aid or assistance
8 during a Period of Assistance under the Mutual Aid and Assistance Program.

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- 10 D. Confidential Information - Any document shared with any signatory of this Agreement that is
11 marked confidential, including but not limited to any map, report, notes, papers, opinion, or
12 e-mail which relates to the system vulnerabilities of a Member or Associate Member.
- 13
- 14 E. Period of Assistance – A specified period of time when a Responding Member assists a
15 Requesting Member. The period commences when personnel, equipment, or supplies
16 depart from Responding Member’s home base and ends when the resources return to their
17 home base (portal to portal). All protections identified in the agreement apply during this
18 period. The specified Period of Assistance may occur during response to or recovery from
19 an emergency, as previously defined.
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- 21 F. National Incident Management System (NIMS): A national, standardized approach to
22 incident management and response that sets uniform processes and procedures for
23 emergency response operations.
- 24

25 **ARTICLE III**

26 **ADMINISTRATION**

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- 29 A. The Mutual Aid and Assistance Program shall be administered through a statewide
30 NMWARN Committee. The purpose of the NMWARN Committee is to provide coordination
31 of response activities of the Mutual Aid and Assistance Program before, during, and after an
32 emergency. The NMWARN Committee, under the leadership of an elected Chairperson,
33 shall meet at least annually to address Mutual Aid and Assistance Program issues, and to
34 review emergency preparedness and response procedures.
- 35
- 36 B. The NMWARN Committee shall consist of seven members, representing:
 - 37
 - 38 1. A Regular Member water system serving a population of 10,000 persons or greater
 - 39 2. A Regular Member water system serving a population of less than 10,000 persons
 - 40 3. A Regular Member wastewater system
 - 41 4. A Regular Member at-large water or wastewater system
 - 42 5. The New Mexico Environment Department, Drinking Water Bureau
 - 43 6. The New Mexico Department of Homeland Security and Emergency Management
 - 44 7. The New Mexico Rural Water Association
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1 **ARTICLE IV**
2 **PROCEDURES**
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4 The NMWARN Committee shall develop operational and planning procedures for the Mutual Aid
5 and Assistance Program in coordination with members and state emergency management and
6 public health officials. These procedures shall be reviewed at least annually and updated as
7 needed by the NMWARN Committee.
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10 **ARTICLE V**
11 **REQUESTS FOR ASSISTANCE**
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13 A. Member Responsibility: Members shall identify an Authorized Official and alternates;
14 provide contact information (including 24-hour access or best available) and maintain
15 resource information that may be available from the utility for mutual aid and assistance
16 response. Such contact information shall be updated annually or when changes occur,
17 provided to the NMWARN Committee.
18

19 In the event of an Emergency, a Member's Authorized Official may request mutual aid and
20 assistance from a participating Member. Requests for assistance can be made orally or in
21 writing. When made orally, the request for personnel, equipment, and supplies shall be
22 prepared in writing as soon as practicable. Requests for assistance shall be directed to the
23 Authorized Official of the participating Member. Specific protocols for requesting aid shall
24 be provided in the required procedures (Article IV).
25

26 B. Response to a Request for Assistance – Members of the agreement are not obligated to
27 respond to a request. After a Member receives a request for assistance, the Authorized
28 Official evaluates whether or not to respond, whether resources are available to respond, or
29 if other circumstances would hinder response. Following the evaluation, the Authorized
30 Representative shall inform, as soon as possible, the Requesting Member whether it will
31 respond. If the Member is willing and able to provide assistance, the Member shall inform
32 the Requesting Member about the type of available resources and the approximate arrival
33 time of such assistance.
34

35 C. Discretion of Responding Member's Authorized Official – Execution of this Agreement does
36 not create any duty to respond to a request for assistance. When a Member receives a
37 request for assistance, the Authorized Official shall have sole and absolute discretion as to
38 whether or not to respond, or the availability of resources to be used in such response. An
39 Authorized Member's decisions on the availability of resources shall be final.
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42 **ARTICLE VI**
43 **RESPONDING MEMBER PERSONNEL**
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45 A. National Incident Management System - When providing assistance under this Agreement,
46 the Requesting Utility and Responding Utility shall be organized and shall function under the
47 National Incident Management System.
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49 B. Control - While employees so provided may be under the supervision of the Responding
50 Member, the Responding Member's employees come under the direction and control of the
51 Requesting Member, consistent with the NIMS Incident Command System to address the

1 needs identified by the Requesting Member. The Requesting Member's Authorized Official
2 shall coordinate response activities with the designated supervisor(s) of the Responding
3 Member(s). The Responding Member's designated supervisor(s) must keep accurate
4 records of work performed by personnel during the specified Period of Assistance.
5

- 6 C. Food and Shelter – Whenever practical, Responding Member personnel must be self-
7 sufficient for up to 72 hours. When possible, the Requesting Member shall supply
8 reasonable food and shelter for Responding Member personnel. If the Requesting Member
9 is unable to provide food and shelter for Responding personnel, the Responding Member's
10 designated supervisor is authorized to secure the resources necessary to meet the needs of
11 its personnel. Except as provided below, the cost for such resources must not exceed the
12 State per diem rates for that area. To the extent Food and Shelter costs exceed the State
13 per diem rates for the area, the Responding Member must demonstrate that the additional
14 costs were reasonable and necessary under the circumstances. Unless otherwise agreed
15 to in writing, the Requesting Member remains responsible for reimbursing the Responding
16 Member for all reasonable and necessary costs associated with providing food and shelter,
17 if such resources are not provided.
18
- 19 D. Communication – The Requesting Member shall provide Responding Member personnel
20 with radio equipment as available, or radio frequency information, in order to facilitate
21 communications with local responders and utility personnel.
22
- 23 E. Status - Unless otherwise provided by law, the Responding Member's officers and
24 employees retain the same privileges, immunities, rights, duties and benefits as provided in
25 their respective jurisdictions.
26
- 27 F. Licenses and Permits – To the extent permitted by law, Responding Member personnel that
28 hold licenses, certificates, or permits evidencing professional, mechanical, or other skills
29 shall be allowed to carry out activities and tasks relevant and related to their respective
30 credentials during the specified Period of Assistance.
31
- 32 G. Right to Withdraw - The Responding Member's Authorized Official retains the right to
33 withdraw some or all of its resources at any time for any reason in the Responding
34 Member's sole and absolute discretion. Notice of intention to withdraw must be
35 communicated to the Requesting Member's Authorized Official and the NMWARN
36 Committee as soon as is practicable under the circumstances.
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39 **ARTICLE VII**
40 **COST- REIMBURSEMENT**
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42 The Requesting Member shall reimburse the Responding Member for each of the following
43 categories of costs incurred during the specified Period of Assistance as agreed in whole or in
44 part by both parties; provided, that any Responding Member may assume in whole or in part
45 such loss, damage, expense, or other cost, or may loan such equipment or donate such
46 services to the Requesting Member without charge or cost.
47

- 48 A. Personnel – The Responding Member shall be reimbursed by the Requesting Member for
49 personnel costs incurred for work performed during the specified Period of Assistance.
50 Responding Member personnel costs shall be calculated according to the terms provided in
51 their employment contracts or other conditions of employment. The Responding Member's

1 designated supervisor(s) must keep accurate records of work performed by personnel
2 during the specified Period of Assistance. Requesting Member reimbursement to the
3 Responding Member could consider all personnel costs, including salaries or hourly wages,
4 overtime, costs for fringe benefits, indirect costs and outside professional services.
5

6 B. Equipment – The Requesting Member shall reimburse the Responding Member for the use
7 of equipment during the specified Period of Assistance, including, but not limited to,
8 reasonable rental rates, all fuel, lubrication, maintenance, transportation, and
9 loading/unloading of loaned equipment. All equipment shall be returned to the Responding
10 Member in good working order as soon as is practicable and reasonable under the
11 circumstances. As a minimum, rates for equipment use must be based on the Federal
12 Emergency Management Agency’s (FEMA) Schedule of Equipment Rates. If a Responding
13 Member uses rates different from those in the FEMA Schedule of Equipment Rates, the
14 Responding Member must provide such rates orally or in writing to the Requesting Member
15 prior to supplying the equipment. Mutual agreement on which rates are used must be
16 reached prior to dispatch of the equipment, and confirmed in writing within one week after
17 dispatch of the equipment. Reimbursement for equipment not referenced on the FEMA
18 Schedule of Equipment Rates must be developed based on actual recovery of costs. If
19 Responding Member must lease a piece of equipment while its equipment is being repaired,
20 Requesting Member shall reimburse Responding Member for such rental costs.
21

22 C. Materials and Supplies – The Requesting Member must reimburse the Responding Member
23 in kind or at actual replacement cost, plus handling charges, for use of expendable or non-
24 returnable supplies. The Responding Member must not charge direct fees or rental charges
25 to the Requesting Member for other supplies and reusable items that are returned to the
26 Responding Member in a clean, damage-free condition. Reusable supplies that are
27 returned to the Responding Member with damage must be treated as expendable supplies
28 for purposes of cost reimbursement.
29

30 D. Payment Period – The Responding Member must provide an itemized bill to the Requesting
31 Member for all expenses incurred by the Responding Member while providing assistance
32 under this Agreement. The Responding Member must send the itemized bill not later than
33 (90) ninety days following the end of the Period of Assistance. The Responding Member
34 may request additional periods of time within which to submit the itemized bill, and
35 Requesting Member shall not unreasonably withhold consent to such request. The
36 Requesting Member must pay the bill in full on or before the forty-fifth (45th) day following
37 the billing date. Unpaid bills shall become delinquent upon the forty-sixth (46th) day
38 following the billing date, and once delinquent shall accrue interest at the rate of prime plus
39 two percent (2%) per annum as reported by the Wall Street Journal.
40

41 E. Records - Each Responding Member and their duly authorized representatives shall have
42 access to a Requesting Member’s books, documents, notes, reports, papers and records
43 which are directly pertinent to this Agreement for the purposes of reviewing the accuracy of
44 a cost bill or making a financial, maintenance or regulatory audit. Each Requesting Member
45 and their duly authorized representatives shall have access to a Responding Member’s
46 books, documents, notes, reports, papers and records which are directly pertinent to this
47 Agreement for the purposes of reviewing the accuracy of a cost bill or making a financial,
48 maintenance or regulatory audit. Such records shall be maintained for at least three (3)
49 years or longer where required by law.
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1 **ARTICLE VIII**
2 **DISPUTES**
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4 If any controversy or claim arises out of, or relates to, the execution of the Agreement, including,
5 but not limited to, alleged breach of the Agreement, the disputing Members shall first attempt to
6 resolve the dispute by negotiation, followed by mediation and finally shall be settled by binding
7 arbitration before a panel of three (3) persons chosen from the Regular Members of this Mutual
8 Aid Agreement which are participating utilities, excluding those members who are parties to the
9 dispute.

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11 Each party to the dispute shall choose one panel member and those panel members shall agree
12 on one additional panel member.
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14 The arbitration panel shall adopt rules of procedure and evidence in accordance with the Rules
15 of the American Arbitration Association, shall determine all issues in dispute by majority vote
16 and shall assess damages. The decision of the arbitration panel shall be final and binding upon
17 the parties to the dispute. Any court of competent jurisdiction may enter the judgment rendered
18 by the arbitrators as final judgment that is binding on the parties.
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21 **ARTICLE IX**
22 **REQUESTING MEMBER'S DUTY TO INDEMNIFY**
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24 The Requesting Member shall assume the defense of, fully indemnify and hold harmless, the
25 Responding Member, its officers and employees, from all claims, loss, damage, injury and
26 liability of every kind, nature and description, directly or indirectly arising from Responding
27 Member's work during a specified Period of Assistance. The scope of the Requesting
28 Member's duty to indemnify includes, but is not limited to, suits arising from, or related to,
29 negligent or wrongful use of equipment or supplies on loan to the Requesting Member, or faulty
30 workmanship or other negligent acts, errors or omissions by Requesting Member or the
31 Responding Member personnel.
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33 The Requesting Member's duty to indemnify is subject to, and shall be applied consistent with,
34 the conditions set forth in Article X.
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37 **ARTICLE X**
38 **SIGNATORY INDEMNIFICATION**
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40 In the event of a liability, claim, demand, action, or proceeding of whatever kind or nature arising
41 out of a specified Period of Assistance, the Members who receive and provide assistance shall
42 have a duty to defend, indemnify, save and hold harmless all Non-Responding Members, their
43 officers, agents and employees from any liability, claim, demand, action, or proceeding of
44 whatever kind or nature arising out of a Period of Assistance.
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ARTICLE XI
WORKER'S COMPENSATION CLAIMS

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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.

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ARTICLE XII
NOTICE

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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.

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ARTICLE XIII
INSURANCE

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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.

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ARTICLE XIV
CONFIDENTIAL INFORMATION

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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.

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ARTICLE XV
EFFECTIVE DATE

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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.

1 **ARTICLE XVI**
2 **WITHDRAWAL**
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4 A Member may withdraw from this Agreement by providing written notice of its intent to
5 withdraw to the NMWARN Committee Chair. Withdrawal takes effect 60 days after the
6 appropriate officials receive notice. Withdrawal from this Agreement shall in no way affect a
7 Requesting Member's duty to reimburse a Responding Member for cost incurred during a
8 Period of Assistance, which duty shall survive such withdrawal.
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11 **ARTICLE XVII**
12 **MODIFICATION**
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14 No provision of this Agreement may be modified, altered or rescinded by individual parties to the
15 Agreement. Modifications to this Agreement may be due to programmatic operational changes
16 to support the agreement, legislative action, creation of an interstate aid and assistance
17 agreement, or other developments. Modifications require a simple majority vote of Regular
18 Members of the NMWARN. The NMWARN Committee Chair must provide written notice to all
19 Members of approved modifications to this Agreement. Approved modifications take effect 60
20 days after the date upon which notice is sent to the Members.
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23 **ARTICLE XVIII**
24 **SEVERABILITY**
25

26 The parties agree that if any term or provision of this Agreement is declared by a court of
27 competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms
28 and provisions shall not be affected, and the rights and obligations of the parties shall be
29 construed and enforced as if the Agreement did not contain the particular term or provision held
30 to be invalid.
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33 **ARTICLE XIX**
34 **PRIOR AGREEMENTS**
35

36 This Agreement supersedes all prior Agreements between Members to the extent that such
37 prior Agreements are inconsistent with this Agreement.
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40 **ARTICLE XX**
41 **PROHIBITION ON THIRD PARTIES AND ASSIGNMENT OF RIGHTS/DUTIES**
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43 This Agreement is for the sole benefit of the Members and no person or entity must have any
44 rights under this Agreement as a third party beneficiary. Assignments of benefits and
45 delegations of duties created by this Agreement are prohibited and must be without effect.
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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: _____

By: _____

Title: _____

Title _____

Please Print Name

Please Print Name

Approved as to form and legality

By: _____
Attorney for Utility

Please Print Name