

Colorado's Water/Wastewater Agency Response Network (CoWARN) Mutual Aid and Assistance 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 Colorado's Water/Wastewater Agency Response Network (CoWARN).

This Agreement is authorized under Sections 24-32-2113 and 24-110-101, et seq., of the Colorado Revised Statutes.

ARTICLE I. PURPOSE

Recognizing that emergencies may require assistance in the form of personnel, equipment, and supplies from outside the area of impact, the signatory utilities established CoWARN. Through CoWARN, Members coordinate response activities and share resources during emergencies. This Agreement sets forth the procedures and standards for the administration of CoWARN.

ARTICLE II. DEFINITIONS

- A. Emergency—A natural or manmade event that is, or is likely to be, beyond the control of the services, personnel, equipment, and facilities of a Member. A shortage of untreated (raw) water, a decline in well yields, or inadequate capacity for treatment or delivery of treated water is not an Emergency.
- B. Member—Any public or private Water or Wastewater Utility that manifests intent to participate in CoWARN by executing this Agreement.
- C. Authorized Official—An employee of a Member that is authorized by the Member's governing board or management to request assistance or offer assistance under this Agreement.
- D. Requesting Member—A Member who requests assistance under CoWARN.
- E. Responding Member—A Member that responds to a request for assistance under CoWARN.
- F. 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 a Responding Member's facility and ends when the resources return to their facility (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.
- G. National Incident Management System (NIMS)—A national, standardized approach to incident management and response that sets uniform processes and procedures for emergency response operations. <http://www.fema.gov/emergency/nims/index.shtm>

ARTICLE III. ADMINISTRATION

CoWARN shall be administered through Regional Committees and a Statewide Committee. The purpose of a Regional Committee is to provide local coordination of CoWARN before, during, and after an Emergency. The Statewide Committee will establish the regions pursuant to its Bylaws. Each Regional Committee, under the

leadership of an elected Chairperson, shall meet at least annually to address CoWARN issues and to review Emergency preparedness and response procedures. The Chairperson of each Regional Committee represents his/her Regional Committee's interests on the Statewide Committee. In addition to representing the interests of the Members, the Statewide Committee includes representatives from the Colorado Department of Public Health and Environment, the Rocky Mountain Section of the American Water Works Association, the Rocky Mountain Water Environment Association, the Colorado Rural Water Association, the Rural Community Assistance Partnership, and the Colorado Department of Local Affairs Division of Emergency Management. Pursuant to its Bylaws, the Statewide Committee may vote to include representatives from additional organizations. Under the leadership of the Chairperson, the Statewide Committee members shall plan and coordinate Emergency planning and response activities for CoWARN.

ARTICLE IV.
REQUESTS FOR ASSISTANCE

- A. *Member Contacts:* Upon execution of this Agreement, Members shall identify an Authorized Official and alternates, provide contact information including 24-hour access, and maintain resource information made available by the Member for mutual aid and assistance response. The Regional Committee Chairperson shall maintain a list of all Members in the respective region and their contact information. The Statewide Committee Chairperson shall maintain a master list of all Members of CoWARN and their contact information, which shall be available to Members at www.cowarn.org.
- B. *Requests for Assistance:* In the event of an Emergency, a Member's Authorized Official may request mutual aid and assistance from participating Members. 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 Officials of the participating Members. The Requesting Member shall provide the participating Members with the following information:
1. a general description of the damage sustained;
 2. the part of the water/wastewater system for which assistance is needed;
 3. the amount and type of personnel, equipment, materials, and supplies needed and a reasonable estimate of the length of time they will be needed;
 4. the present weather conditions and the forecast for the next twenty-four (24) hours;
 5. a specific time and place for a representative of the Requesting Member to meet the personnel and equipment of the Responding Member(s); and
 6. the identification of work conditions and special constraints, such as availability of fuel supplies, lodging/meal support, medical facilities, security, communications, etc.
- C. *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 a Member is willing and able to provide assistance, the Member shall provide the Requesting Member with the following information:
1. a complete description of the personnel, equipment and materials to be furnished to the Requesting Member;
 2. the estimated length of time the personnel, equipment and materials will be available;
 3. the work experience and ability of the personnel and the capability of the equipment to be furnished;

4. the name of the person or persons to be designated as supervisory personnel; and
5. the estimated time when the assistance provided will arrive at the location designated by the Authorized Official of the Requesting Member.

D. *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 absolute discretion as to the availability of resources. An Authorized Official's decisions on the availability of resources shall be final.

ARTICLE V.

RESPONDING MEMBER PERSONNEL AND EQUIPMENT

- A. *National Incident Management System (NIMS):* When providing assistance under this Agreement, the Requesting Member and Responding Member shall be organized and shall function under NIMS.
- B. *Control:* The personnel and equipment of the Responding Member shall remain, at all times, under the direct supervision and control of the designated supervisory personnel of the Responding Member. In instances where only equipment is provided by the Responding Member, the ownership of said equipment shall remain with the Responding Member, and said equipment shall be returned to the Responding Member immediately upon request. Representatives of the Requesting Member shall suggest work assignments and schedules for the personnel of the Responding Member; however, the designated supervisory personnel of the Responding Member shall have the exclusive responsibility and authority for assigning work and establishing work schedules for the personnel of the Responding Member. The designated supervisory personnel shall maintain daily personnel time records and a log of equipment hours, be responsible for the operation and maintenance of the equipment furnished by the Responding Member, and report work progress to the Requesting Member.
- C. *Food and Shelter:* The Requesting Member shall supply reasonable food and shelter for Responding Member personnel during the Period of Assistance. If the Requesting Member fails to provide food and shelter for Responding Member personnel, the Responding Member's designated supervisor is authorized to secure the resources necessary to meet the needs of its personnel. The cost for such resources must not exceed the state per diem rates for that area. The Requesting Member remains responsible for reimbursing the Responding Member for all costs associated with providing food and shelter, if the Requesting Member does not provide such resources.
- 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 who 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. Notice of intention to withdraw must be communicated to the Requesting Member's Authorized Official as soon as possible.

ARTICLE VI.
COST REIMBURSEMENT

Unless otherwise mutually agreed in whole or in part, the Requesting Member shall reimburse the Responding Member for each of the following categories of costs incurred while providing aid and assistance during the specified Period of Assistance.

- A. *Personnel*: Responding Member personnel are to be paid for work completed during a specified Period of Assistance according to the terms provided in their employment contracts or other conditions of employment. The Responding Member 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 must consider all personnel costs, including salaries or hourly wages, costs for fringe benefits, and indirect costs.
- B. *Equipment*: The Responding Member shall be reimbursed for the use of its equipment during the Period of Assistance according to the Schedule of Equipment Rates established and published by the Federal Emergency Management Agency (FEMA), <http://www.fema.gov/xls/government/grant/pa/eqsch.xls>. Rates for equipment not referenced on the FEMA Schedule of Equipment Rates shall be developed based on actual recovery of 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 it incurred as a result of providing assistance under this Agreement. The Responding Member must send the itemized bill not later than ninety (90) days following the end of the Period of Assistance. The Requesting Member must pay the bill in full on or before the forty-fifth (45th) day following the billing date. Unpaid bills become delinquent on the forty-sixth (46th) day following the billing date, and, once delinquent, the bill accrues interest at the bank prime loan rate, as reported in the Federal Reserve Statistical Release H.15, <http://www.federalreserve.gov/releases/H15/update/>, for the date the request is made, plus two percent (2%) per annum, computed on an actual days/actual days basis.

ARTICLE VII.
LIABILITY, INSURANCE, AND IMMUNITY

Notwithstanding Articles V and VI, each Member 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. Nothing contained herein will constitute a waiver by any Member of the provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq.

ARTICLE VIII.
SIGNATORIES

In the event of a claim, demand, action, or proceeding of whatever kind or nature arising out of a specified Period of Assistance, those Members who receive and provide assistance shall be totally responsible for any liability, damages, or costs. Those Members whose involvement in the subject transaction or occurrence is limited to execution of this Agreement shall have no liability or responsibility whatsoever for any such claim, action, demand, or other proceeding.

ARTICLE IX.
NOTICE

A 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 of this Agreement shall provide prompt and timely notice to the Members that 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 X.
EFFECTIVE DATE AND TERM

This Agreement shall be effective after the Member executes the Agreement and the applicable Regional Committee Chairperson receives the Agreement. This Agreement shall continue in force and remain binding on each and every Member until December 31st of 2027. This Agreement may be renewed for a period of twenty years upon the signature of those Members who wish to participate. Any Member may terminate its participation in this Agreement pursuant to Article XI.

ARTICLE XI.
WITHDRAWAL

A Member may withdraw from CoWARN by providing written notice of its intent to withdraw to the applicable Regional Committee Chairperson. Withdrawal takes effect sixty (60) days after the Regional Committee Chairperson receives notice. A withdrawing Member also shall provide copies of the notice of withdrawal to the Statewide Chairperson and all Regional Members. Withdrawal of participation in CoWARN by a Member shall not affect the continued operation of this Agreement between and among the remaining Members.

ARTICLE XII.
MODIFICATION

No provision of this Agreement may be modified, altered, or rescinded by individual Members. Modifications to this Agreement may be due to programmatic operational changes to support the Agreement. Modifications require a simple majority vote of Members within each region and a unanimous agreement among the regions. The Statewide Committee Chairperson must provide written notice to all Members of approved modifications to this Agreement. Approved modifications take effect sixty (60) days after the date upon which notice is sent to the Members.

ARTICLE XIII.
PRIOR AGREEMENTS

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

ARTICLE XIV.
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.

Now, therefore, in consideration of the covenants and obligations set forth in this Agreement, the Water or Wastewater Utility listed here manifests its intent to be a Member of CoWARN by executing this Agreement on this _____ day of _____ 20__.

Water/Wastewater Utility: _____

By: _____

Title: _____

Authorized Officials:

Name: _____ Phone: _____

Name: _____ Phone: _____

Name: _____ Phone: _____

Name: _____ Phone: _____

24-hour contact: _____ Phone: _____