

Wyoming Water and Wastewater Mutual Aid and Assistance Agreement

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.

This Agreement is authorized under the Wyoming Homeland Security Act, Wyoming Statute §19-13-109, which requires that local coordinators in collaboration with other public and private agencies within this state develop mutual aid arrangements for aid and assistance in case of disaster of extreme nature or that is too great to be dealt with unassisted.

ARTICLE I PURPOSE

Recognizing that emergencies may require assistance in the form of personnel, equipment, and supplies from outside the area of impact, the Water and Wastewater utilities established this Intrastate Program for Mutual Aid and Assistance. Through the Wyoming Water and Wastewater Mutual Aid and Assistance Program, Members may coordinate response activities and share resources during emergencies or events too great to be dealt with unassisted. This Agreement sets forth the procedures and standards for the administration of the Wyoming Water and Wastewater Mutual Aid and Assistance Program.

ARTICLE II DEFINITIONS

- A. Authorized Official - An employee(s) of a Member that is authorized by the Member's governing board or board of directors to
 - a. Request assistance;
 - b. Offer assistance;
 - c. Refuse to offer assistance; or
 - d. Withdraw assistance.
- B. Emergency - A natural or manmade event that is, or is likely to be, too great to be dealt with by the services, personnel, equipment, and facilities of a Water or Wastewater Utility unassisted.
- C. Member - Any public or private Water or Wastewater Utility that manifests its intent to participate in the Wyoming Water and Wastewater Mutual Aid and Assistance Program by executing this Agreement.
- D. National Incident Management System (NIMS) - A national, standardized approach to incident management and response that sets forth uniform processes and procedures for emergency response operations.

- 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 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.
- F. Requesting Member - A Member who requests assistance under this Agreement.
- G. Responding Member - A Member that responds to a request for assistance under this Agreement.
- H. WYOWARN - Wyoming Water/Wastewater Agency Response Network. A network of Members.

ARTICLE III **ADMINISTRATION**

The Wyoming Water and Wastewater Mutual Aid and Assistance Agreement will be administered through a Statewide Committee consisting of a Chair, Vice-Chair, Secretary and up to eight (8) Regional Coordinators. The Statewide Committee shall organize itself from its membership and elect the Chair, Vice-Chair, Secretary and Regional Coordinators. The Statewide Committee is elected by Member Utilities. Three (3) committee members shall be appointed for a term of one (1) year, Three (3) for a term of two (2) years, Three (3) for a term of three (3) years and two (2) for a term of four (4) years. Thereafter, each statewide committee member shall be appointed for a term of four (4) years.

The state is divided into regions consistent with the Wyoming Office of Homeland Security's Regional Emergency Response Teams. The Regional Coordinators represent the interests of their respective regions on the Statewide Committee. The Statewide Committee may include advisory representatives from organizations such as the American Water Works Association, U.S. Environmental Protection Agency Region 8, Wyoming Department of Environmental Quality, Wyoming Office of Homeland Security, Wyoming Water Development Commission, Wyoming Association of Rural Water Systems and Casper College.

ARTICLE IV **MEMBER RESPONSIBILITIES**

Members shall identify an Authorized Official with alternates and provide contact information including 24-hour access for mutual aid and assistance response to the Statewide Committee Chair for distribution among the Members.

ARTICLE V
REQUESTS FOR ASSISTANCE

Request for Assistance: In the event of an emergency, a Member's Authorized Official may request mutual aid and assistance from any other Member or Statewide Committee member. Requests for assistance can be made orally or in writing. When made orally, the request for personnel, equipment, and supplies will be prepared in writing as soon as practicable. The Requesting Member will provide the following information when making a request for assistance:

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 at the Requesting Member's location;
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. A description of work conditions and special constraints such as availability of fuel supplies, lodging/meal support, medical facilities, security, communications, etc.

Regional Coordinator Response to a Request for Assistance: A Requesting Member may ask a Regional Coordinator to assist in organizing a response. After a Regional Coordinator receives a request for assistance and is asked to assist in organizing a response, the Regional Coordinator will determine whether he/she is willing and able to assist. If willing and able, the Regional Coordinator will inform the Requesting Member that they can assist and may, if necessary activate the WYOWARN by distributing the request for assistance and related information to Members and other Regional Coordinators. The Regional Coordinator may assist in organizing a response as follows:

1. If a Member is willing and able to provide assistance, the Regional Coordinator will inform the Requesting Member about the type of available resources and the approximate arrival time of such assistance;
2. If multiple Members are willing and able to provide assistance, the Regional Coordinator will select the Responding Member(s) that can mobilize the quickest and provide the best match for the identified needs of the Requesting Member. The Regional Coordinator shall then inform the Requesting Member about the particulars of available resources and the approximate arrival time of such assistance.

Member Response to a Request for Assistance: After a Member receives a request for assistance, the Authorized Official evaluates whether resources are available and if the Member is willing and able to respond to the request for assistance. If willing and able to respond, the Authorized Official will provide the following information.

1. A complete description of the personnel, equipment and materials available to respond to the request for assistance;
2. The estimated length of time the personnel, equipment and materials will be available;
3. A brief description of the 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 can arrive at the location designated by the Authorized Official of the Requesting Member.

Discretion of Responding Member's Authorized Official: Execution of this Agreement does not create any duty to respond to a request for assistance.

ARTICLE VI
RESPONDING MEMBER PERSONNEL

National Incident Management System: When providing emergency assistance under this Agreement, the Requesting Member and Responding Member will be organized and will function under the National Incident Management System (NIMS).

Control: Responding Member personnel will remain under the direction and control of the Responding Member. The Requesting Member's Authorized Official will coordinate response activities with the designated supervisor(s) of the Responding Member(s) in a manner consistent with NIMS. The Responding Member(s) supervisor(s) must keep accurate records of work performed by personnel during the Period of Assistance.

Food and Shelter: The Requesting Member agrees to supply reasonable food and shelter for Responding Member personnel. If the Requesting Member is unable to provide food and shelter for Responding Member personnel, the Requesting Member shall notify Responding Member prior to the Period of Assistance. The Requesting Member is responsible for reimbursing the Responding Member for all reasonable costs associated with providing food and shelter during the Period of Assistance, if such resources are not provided by the Requesting Member.

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

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.

Licenses and Permits: To the extent permitted by law, Responding Member personnel holding licenses, certificates, or permits establishing professional, mechanical, or other skills will be permitted to carry out activities and tasks relevant and related to their respective credentials during the specified Period of Assistance, as approved or requested by the Requesting Member.

Right to Withdraw: The Responding Member's Authorized Official retains the right to withdraw, in part or in its entirety, the provided resources at any time. Notice of intention to withdraw must be communicated to the Requesting Member's Authorized Official as soon as possible.

ARTICLE VII
COST REIMBURSEMENT

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

Personnel: The Requesting Member will reimburse the Responding Member for all personnel costs incurred by the Responding Member for work performed during a Period of Assistance. Responding Member personnel are to be paid for work completed during a Period of Assistance according to the terms provided in their employment contracts or other conditions of employment. The Responding Member designated supervisor(s) will keep accurate records of work performed by personnel during the Period of Assistance.

Equipment: The Requesting Member will reimburse the Responding Member for the use of Responding Member's equipment during the Period of Assistance. Rates for equipment use must be based on the Federal Emergency Management Agency's (FEMA) Schedule of Equipment Rates. Reimbursement for equipment not referenced on the FEMA Schedule of Equipment Rates must be reached in writing prior to the Period of Assistance. Except in cases of gross negligence or willful misconduct, the Requesting Member will repair or replace, with like kind and quality as determined by the Responding Member, any equipment damaged during the Period of Assistance.

Materials and Supplies: The Requesting Member must reimburse the Responding Member for all Responding Member's materials and supplies furnished during a Period of Assistance. Except in cases of Responding Member gross negligence or willful misconduct, the Requesting Member will repair or replace, with like kind and quality as determined by the Responding Member, any materials or supplies damaged during the Period of Assistance.

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 upon the forty-sixth (46th) day following the billing date. Once delinquent, the Responding Member may charge interest in accordance with applicable Wyoming and Federal law, including but not necessarily limited to Wyoming Statute §1-16-102.

ARTICLE VIII
DISPUTES

Any controversy or claim arising out of, or relating to, this Agreement, including, but not limited to, alleged breach of the Agreement, may be settled by mediation in accordance with Wyoming Statute §1-43-101. Should mediation fail, the Member(s) may proceed with any/all legal avenues available under Wyoming or Federal Law.

ARTICLE IX
REQUESTING AND RESPONDING MEMBER LIABILITY

A Member who receives and provides assistance will assume the risk of any liability arising from its own gross negligence or willful misconduct. A Member who receives and/or provides assistance does not agree to insure, defend or indemnify any other Members. Governmental entities do not waive any defenses available to it under the Governmental Claims Act. Participation in this Agreement shall not in any way be deemed to enlarge the liability of any Member.

ARTICLE X
NOTICE OF CLAIM OR SUIT

A Member who becomes aware of a claim or suit that in any way, directly or indirectly, contingently or otherwise, affects or might affect other Members shall provide notice to those Members within seventy-two (72) hours of notification of a claim. Each Member reserves the right to participate in the defense of such claims or suits as necessary to protect its own interests.

ARTICLE XI
INSURANCE

Each Member shall maintain insurance or coverage for its liability that covers activities that it may undertake, as follows:

1. Members who are government entities or agencies:
 - a. Unemployment and Worker's Compensation Coverage. During the Period of Assistance, each Member shall maintain its own unemployment and worker's compensation coverage, as required by law, for its employees.
 - b. Automobile Liability Coverage. During the Period of Assistance, each Member who is a government entity or agency, shall be responsible for complying with the state motor vehicle laws including the registration, licensing and liability coverage for its own vehicles. The government entity or agency shall provide automobile liability insurance coverage or other liability coverage to cover any liability it may have as provided by the Wyoming Governmental Claims Act, Wyoming Statute §1-39-101 et seq.
 - c. General Liability Coverage. Each Member who is a government entity or agency agrees to maintain general liability insurance or other liability coverage to cover any liability it may have as provided by the Wyoming Governmental Claims Act, Wyoming Statute §1-39-101 et seq.
2. Members who are private entities or agencies:
 - a. Unemployment and Worker's Compensation Coverage. During the Period of Assistance, each Member shall maintain its own unemployment and worker's compensation coverage, as required by law, for its employees.
 - b. Automobile Liability Coverage. During the Period of Assistance, each Member who is a private entity or organization shall be responsible for complying with the state motor vehicle laws including the registration, licensing and liability coverage for its own vehicles. The Member who is a private entity or organization shall provide automobile liability insurance coverage of not less than Five Hundred Thousand Dollars (\$500,000.00) per occurrence for owned, non-owned, and hired vehicles, or shall maintain a comparable self-insurance program.

- c. General Liability. Each Member who is a private entity or organization agrees to obtain general liability insurance, as applicable, with minimum single limits of no less than Five Hundred Thousand Dollars (\$500,000.00) or be comparably covered by a self-insurance program.

All insurance or coverage required under this Agreement shall be in effect during the Period of Assistance. All policies or coverage shall be primary and not contributory. During the Period of Assistance, parties shall pay the premiums on the required policies or coverage and shall not allow the policies or coverage to be revoked, canceled, amended, or allowed to lapse.

ARTICLE XII **EFFECTIVE DATE**

This Agreement becomes effective after the Official for the Water and Wastewater Utility, as authorized by the Governing Body or Board of Directors, executes the Agreement. The Member shall forward an executed copy of the Agreement to the Statewide Committee Chair. Statewide Committee Chair will keep a list of all Agreements received.

ARTICLE XIII **WITHDRAWAL**

A Member may withdraw from this Agreement at any time by providing written notice to the Statewide Committee Chair. Withdrawal is effective immediately. Withdrawal from this Agreement will in no way affect a Requesting Member's duty to reimburse a Responding Member for costs incurred during a Period of Assistance, which shall survive such withdrawal.

ARTICLE XIV **MODIFICATION**

No provision of this Agreement may be modified, altered, or rescinded solely by an individual Member. Modifications require a simple majority vote of the Members. The Statewide Committee Chair will provide written notice to all Members of approved modifications to this Agreement. Approved modifications are effective ten (10) days after the date upon which notice is sent to the Members.

ARTICLE XV **SEVERABILITY**

The Member agrees 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 will not be affected, and the rights and obligations of the Members will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

XVI **PROHIBITION ON THIRD PARTIES AND ASSIGNMENT OF RIGHTS/DUTIES**

This Agreement is for the sole benefit of the Members and no person or entity will have any rights under this Agreement as a third-party beneficiary. Assignment of Rights and delegations of duties created by this Agreement are prohibited and are without effect.

ARTICLE XVII
GOVERNMENTAL PARTIES

A Member does not waive its governmental or sovereign immunity as provided by applicable law, including Wyoming Statute §1-39-101. A Member retains all immunities and defenses as provided by law with regard to any action, whether in tort, contract, or any other theory of law based on this Agreement.

Now therefore, the authorized representative of the Governing Body or Board of Directors for the Water and/or Wastewater Utility listed below executes this Agreement through signature below and attached resolution.

Water/Wastewater Utility: _____

By: _____ Date: _____

Title: _____

Please Print Name

Attested By: _____

Title: _____

Please Print Name

Attorney approval as to form:

By: _____ Date: _____

Title: _____

Please Print Name