

# **MICHIGAN WATER/WASTEWATER AGENCY RESPONSE NETWORK**

## **Mutual Aid and Assistance Agreement**

**6/25/2013**

### **RECITALS**

WHEREAS, certain Michigan water, and public works agencies (the “Members”), have formed the “Michigan Water/Wastewater Agency Response Network,” (Michigan WARN or MiWARN), to share resources and to assist each other in the form of personnel, equipment, materials and supplies in the event of emergencies that disrupt utility services; and

WHEREAS, the Urban Cooperative Act of 1967, being MCL 124.501 et seq. (the “Act”) permits a public bodies and private entities to work together to provide mutual aid and assistance to both public and private water and wastewater utilities in need of emergency assistance caused by natural or man-made disasters.

WHEREAS, the Members have agreed to enter into this “Michigan Water/Wastewater Agency Response Network Mutual Aid Agreement,” (“Agreement”), to describe the terms and conditions under which emergency assistance may be requested and provided; and

WHEREAS, by executing the Agreement, the Parties express their intent to participate in a program of Mutual Aid and Assistance within the State of Michigan.

NOW, THEREFORE, in consideration of the promises and the mutual undertakings contained in this Agreement, the Members of the Michigan WARN, as agreed upon, and authorized by, their respective legislative authorities mutually agree as follows:

### **AGREEMENT**

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

### **ARTICLE I. PURPOSE**

The Water/Wastewater Mutual Aid Program was established to provide a method whereby water/wastewater utilities together with public works agencies sustaining physical damage from natural or manmade disasters could obtain emergency assistance, in the form of personnel, equipment, and materials and other associated services necessary, from other water/wastewater utilities and public works agencies. This Agreement hereby establishes within the State of Michigan an Intrastate Program for Mutual Aid and Assistance. Through the Michigan WARN Program, Members shall coordinate voluntary response activities and shall share voluntary resources during emergencies and other events, as described in this Agreement.

## ARTICLE II. DEFINITIONS

**A. Agreement** - The Michigan Water/Wastewater Agency Response Network Mutual Aid and Assistance Agreement.

**B. Authorized Official** - An employee, agent, or official of a Member who is authorized by the Member's governing board or management to request assistance of offer assistance under this agreement.

**C. Emergency** - A natural or manmade event that is, or is likely to be, beyond the control of the available services, personnel, equipment, and facilities of a Mutual Aid and Assistance Program Member. The request for aid does not require an official declaration of an emergency by the local or state agencies, and the aid may be provided during the emergency response or recovery phases.

**D. Member** - Any public body or political subdivision or private water and/or wastewater utility and/or public works agency or its principals that execute this Agreement.

**E. Requesting Member** - A Member who requests assistance in accordance with the terms and conditions of this Agreement and the Mutual Aid and Assistance Program.

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

**G. National Incident Management System (NIMS)** – A national, standardized approach to incident management and response created by the federal Department of Homeland Security that sets uniform processes and procedures for emergency response operations to prepare for, protect against, respond to and recover from emergency events.

**H. Period of Assistance** - A specified 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 resources are returned 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.

**I. Steering Committee** – A committee consisting of representatives from Members and other agencies that may have a role to play in the Mutual Aid and Assistance Program (e.g., MIAWWA, APWA-Mi, MDEQ, MWEA, RCAP,

MRWA, WEF, MSPMHSD, public health, water and wastewater utility organizations), that shall administer the WARN program for the state.

**K. Work or Work Related Period** - Any Period of time in which either the personnel or equipment of the Responding Member are being used by the Requesting Member to provide assistance. Specifically included within such period of time are rest breaks when the personnel of the Responding Member will return to active work within a reasonable time. Also, included is mutually agreed-upon rotation of personnel and equipment.

### **ARTICLE III.           ADMINISTRATION**

The Mutual Aid and Assistance Program shall be administered through Regional Committee and, as needed, a Steering Committee. The purpose of the Regional Committee is to provide local coordination of the Mutual Aid and Assistance Program, before, during and after an emergency event. The purpose of a Steering Committee is to provide coordination on a statewide basis of the Mutual Aid and Assistance Program before, during and after an emergency. The Steering Committee, under the leadership of an elected Chair, shall meet at least annually to address Mutual Aid and Assistance Program issues and to review emergency preparedness and response procedures. Under the leadership of the Chair, the Steering Committee members shall plan and coordinate emergency response planning and response activities for the Mutual Aid and Assistance Program.

The Steering Committee, upon being formed and authorized, shall adopt by-laws to govern the administration of the Steering and Regional Committees, and the implementation of this Agreement. The by-laws for the Regional Committees shall be uniform and subject to changes or amendments only by the Steering Committee.

### **ARTICLE IV.           PROCEDURES**

The Steering Committee shall develop operational and planning procedures for the MI WARN Program. These procedures shall be reviewed at least annually and updated as needed.

It is the responsibility of each Member to develop its own operational and planning procedures in accordance and consistent with the procedures adopted by the Steering Committee, to identify the critical components of its own infrastructure and its emergency response resources.

### **ARTICLE V.           REQUESTS FOR ASSISTANCE**

**A. Member Responsibility** – Within forty-eight (48) hours after 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 for mutual aid and assistance response.

In the event of an Emergency, a Member's Authorized Official may request mutual aid and assistance from a Member. Requests for assistance can be made orally or in writing via the website. When made orally, the request for assistance shall be prepared in writing as soon as practicable after the oral request. Requests for assistance shall be directed to the Authorized Official of a Member. Specific protocols for requesting aid are set forth in the operational and planning procedures referenced in Article IV, above.

**B. Response to a Request for Assistance** – After a Member receives a request for assistance, the Authorized Official shall evaluate whether resources are available to respond to the request for assistance. As soon as possible after completing the evaluation, the Authorize Official shall inform the Requesting Member whether it has the resources to 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** – Each Member recognizes and agrees that 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 ability of that member to respond to a request for assistance. An Authorized Official's decisions on the availability of resources shall be final.

## **ARTICLE VI.        RESPONDING MEMBER PERSONNEL**

**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.

NIMS provides a consistent nationwide approach that allows federal, state, local and tribal governments as well as private sector and nongovernmental organizations to work together to manage incidents and disasters of all kinds. To be eligible for federal emergency management assistance, water and wastewater mutual aid and assistance programs must meet NIMS standards for emergency preparedness and response.

**B. Control** - Personnel sent by a Responding Member shall remain under the direct supervision and control of the Responding Member. The Requesting Member's Authorized Official shall coordinate response activities with the designated supervisor(s) of the Responding Members(s). Whenever practical, Responding Member personnel must be self-sufficient for up to 72 hours.

**C. Food and Shelter** - The Requesting Member shall supply reasonable food and shelter for the Responding Member personnel. 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 per diem rates established by the State of Michigan for that area. The Requesting Member remains responsible for

reimbursing Responding Member for all 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 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 & Permits** - To the extent permitted by law, the Responding Member's personnel who hold licenses, certifications or permits issued by the State of Michigan evidencing professional, mechanical or other skills and when such assistance is sought by the Requesting Member, shall be allowed to carry out activities and tasks relevant 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. Notice of withdrawal can be made orally or in writing and is within the complete discretion of the Responding Member. When made orally, the notice of withdrawal shall be prepared and submitted in writing as soon as practicable after the oral notice.

**H. No Waiver of Governmental Immunity** – All of the privileges and immunities from liability, and exemptions from laws, ordinances and rules which apply to the activity of officers, agents and employees of public bodies, including, but not limited to counties, cities, townships, and villages, shall apply to the same degree and extent to the performance of such functions and duties of Members extraterritorially under the provision of this Agreement. No provision of this Agreement is intended to, nor shall any provision of the Agreement be construed as a waiver by any governmental entity, its agents, employees or officials, of any governmental immunity as provided by Public Act 170 of 1964, the "Governmental Immunity Act," as set forth in MCL 691. 1401, et seq.

**I. Independent Contractor** - The Members agree that at all times and for all purposes under the terms of this Agreement each Member's relationship to any other Member shall be that of an independent contractor. No liability, right or benefit arising out of any employer/employee relationship, either express or implied, shall arise or accrue to any Member as a result of this Agreement. Personnel dispatched to aid a Member are entitled to receive benefits and/or compensation to which they are otherwise entitled under the Michigan Workers' Disability Compensation Act of 1969, any pension law, or any act of Congress.

Members, as independent contractors are not authorized to enter into or sign any agreements on behalf of other Members or to make any representations to third parties that are binding upon other Members.

**J. Liability.** Each Member will be solely responsible for the acts of its own employees, agents, and subcontractors, the costs associated with those acts and the defense of those acts. The Members shall not be responsible for any liability or costs associated with those acts and the defense of those acts for Members outside of their political jurisdictions. It is agreed that none of the Members shall be liable for failure to respond for any reason to any request for assistance or for leaving the scene of an Emergency with proper notice after responding to a Request for Assistance.

**K. Insurance.** Each Member shall be responsible for insuring its activities as they relate to MiWARN. MiWARN may choose to require each Member to provide Certificates of Insurance or Self-Insurance demonstrating the Member's proper coverage and limits. In the event any Member has a lapse in proper insurance coverage, as determined by the Steering Committee, the Member may be suspended from participation in MiWARN.

**L. Confidential Information.** To the extent permitted by law, Members shall maintain the strictest confidence and shall take all reasonable steps necessary to prevent the disclosure of any confidential information relating to the ongoing security measures of a public body, capabilities and plans for responding to a violation of the Michigan anti-terrorism act, chapter LXXXIII-A of the Michigan penal code, 1931 PA 328, MCL 750.543a to 750.543z, emergency response plans, risk planning documents, threat assessments, and domestic preparedness strategies, including but not limited to confidential information relating to the plans, specifications and location of water and wastewater facilities provided to it by another Member pursuant to this Agreement. If any Member or third party requests or demands by subpoena or otherwise, that 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 related thereto.

## **ARTICLE VII. 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. Re-requesting Member reimbursement to the Responding

Member must consider all personnel costs, including salaries or hourly wages, costs for fringe benefits, and indirect but necessary costs.

**B. Equipment** - The Requesting Member shall reimburse the Responding Member for the use of equipment during a specified Period of Assistance. At a minimum, rates for equipment use must be based on the 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 in writing to the Requesting Member's Authorized Official prior to supplying resources. 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 the Responding Member's equipment is damaged during the Period of Recovery that is not caused by carelessness, negligence or operator error on the part of the Responding member, the Requesting Member shall reimburse the Responding Member for the repair or replacement of the damaged equipment. Damage must be reasonably attributed to the specific response and taking into consideration normal wear and tear.

**C. Materials and Supplies** - The Responding Member shall be reimbursed for all materials and supplies furnished by it and used or damaged during the Period of assistance, unless such damage is caused by negligence of the Responding Member or their utility personnel. 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. Handling charges shall be as set forth in the by-laws or resolution of the Committee. The Responding Member must not charge direct fees or rental charges to the Requesting Member for other supplies and reusable items that are returned as soon as practicable to the Responding Member in clean, damage-free condition. Reusable supplies that are returned to the Responding Member with damage must be treated as expendable supplies for the purposes of cost reimbursement. Requesting Members shall be given the option of providing the supplies need or used by the Responding Member.

**D. Incidental Costs** - Other reasonably related incidental costs that are accrued by the Responding Member during the specified Period of Assistance shall be paid by the Requesting Member. Incidental costs include travel costs to deploy personnel to the Requesting Member's location, shipping costs to transport equipment, etc.

**E. Payment Period** - The Responding Member must provide an itemized bill to the Requesting Member, listing the services provided, the dates services were provided, and the amount of payment due for all expenses it

incurred as a result of providing assistance under this Agreement. The Responding Member shall 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 sixtieth (60<sup>th</sup>) day following the billing date. The Requesting Member shall return any invalid or incomplete invoice to the Responding Member within thirty (30) days after the Requesting Member receives the invoice. An explanation will accompany the invoice that states the reason for the return and any information needed to correct the invoice. Unpaid bills become delinquent upon the sixty-first (61<sup>st</sup>) day following the billing date unless alternate payment agreement between parties can be reached. Once a bill is determined to be delinquent, it shall accrue interest at the rate of prime plus two percent (2%) per annum as reported by the Wall Street Journal.

**F. Disputed Billings** - Those undisputed portions of a bill shall be paid under the payment plan specified above. Only the disputed portions should be sent to arbitration under Article VIII.

#### **ARTICLE VIII.      DISPUTE RESOLUTION**

If any controversy or claim arises out of or relates to the Agreement, including but not limited to an alleged breach of the Agreement, the disputing Members may agree in writing, if authorized by the Members' governing body, to arbitration of the matter in accordance with the rules of the American Arbitration Association. This provision does not waive any right of any party to file the claim in appropriate court having jurisdiction.

#### **ARTICLE IX.        SIGNATORY INDEMNIFICATION**

In the event of a liability, claim demand, action or proceeding of whatever kind or nature arising out of a specified event of Assistance, the Members who receive and provide assistance shall indemnify and hold harmless those non-responding Members whose involvement in the transaction or occurrence that is the subject of such claim, demand, or other proceeding is limited to execution of this Agreement.

In the event of a claim for property damage or bodily injury by a non-party hereto, arising from an Event of Assistance neither the Responding Member nor the Requesting Member will be deemed to indemnify, defend or hold harmless the other from any act or omission of the Member's officers, employees, agents, contractors or volunteers acting under this Agreement.

#### **ARTICLE X.         WORKER'S COMPENSATION CLAIMS**

Each Member is responsible for providing worker's compensation benefits and administering worker's compensation for its own personnel as it would in the normal course of business.



**ARTICLE XI.      NOTICE**

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 of this Agreement shall provide prompt and timely notice to the Members who may be affected by the suite 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 XII.      EFFECTIVE DATE**

This Agreement shall be effective after the Member's authorized representative executes the Agreement and the Steering Committee Chair receives the Agreement. The Steering Committee shall maintain a list of all Members.

**ARTICLE XIII.      DURATION, WITHDRAWAL, AND TERMINATION OF AGREEMENT**

**A. Duration.** This Agreement shall commence on the Effective Date and continues until terminated in accordance with Section C, below.

**B. Withdrawal by a Member.** Any Member may withdraw, at any time, from this Agreement for any reason, or for no reason at all, upon seven (7) days written notice to the Steering Committee. The withdrawal of any Member shall not terminate or have any effect upon the provisions of this Agreement so long as MiWARN remains composed of at least two (2) Members.

**C. Termination.** This Agreement shall continue until terminated by the first to occur of the following:

- (a) MiWARN consists of less than two (2) Members; or
- (b) A unanimous vote of termination by the total membership of MiWARN.

**ARTICLE XIV.      MODIFICATION**

No provision in this Agreement may be modified, altered, or rescinded by individual parties to the Agreement. Modification to this Agreement may be due to programmatic operational changes to support the agreement. Modifications require a simple majority vote of Members. The Chair of the Steering Committee 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 XV.      ASSIGNMENT OF RIGHTS/DUTIES**

Assignments of benefits and delegations of duties created by this Agreement are prohibited and must be without effect.

**ARTICLE XVI. PRIOR AGREEMENTS**

Nothing within this Agreement shall prohibit a Member from participating in other mutual aid agreements and this Agreement shall not supersede prior Agreements between Members unless the prior Agreement is terminated.

**ARTICLE XVII. 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-Member beneficiary. Assignments of benefits and delegations of duties created by this Agreement are prohibited and must be without effect. Any Member may be removed from participation in this Mutual Aid Agreement by majority vote of the Members of the applicable Regional Committee, or Steering Committee, with adequate notice and a right to be heard at a regular or special meeting.

**ARTICLE XVIII. INTRASTATE & INTERSTATE MUTUAL AID AND ASSISTANCE PROGRAMS**

To the extent practicable, Members of MiWARN shall participate in Mutual Aid and Assistance activities conducted under the State of Michigan Intrastate Mutual Aid and Assistance Program and 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 and public works agencies through this Agreement if such a Program were established.

**ARTICLE XIX. RECORDS, DOCUMENTS AND SENSITIVE INFORMATION**

All records, documents, writings or other information produced or used by the parties to this Agreement, which, under the laws of the State of Michigan, is classified as public or privileged, will be treated as such by the other parties to this Agreement. The parties to this Agreement shall not use any information, systems or records made available to them for any purpose other than to fulfill their contractual duties specified in this Agreement. Both Requesting and Responding Members acknowledge that they will have access to sensitive information of others that may be considered sensitive or protected under the laws of the State of Michigan. If a Member receives a request to provide information of another Member or a third the Member receiving such request shall notify the other Member and they shall jointly agree upon what documentation is to be released.

**ARTICLE XX.      MISCELLANEOUS**

A. This Agreement sets forth the entire agreement between the parties. The language of this Agreement shall be construed as a whole according to its fair meaning and not construed strictly for or against any Member. The parties have taken all actions and secured all approvals necessary to authorize and complete this Agreement.

B. **Severability of Provisions.** If a Court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, then that provision shall be deemed severed from this Agreement. The remainder of this Agreement shall remain in full force.

C. **Governing Law/Consent to Jurisdiction and Venue.** This Agreement is made and entered into in the State of Michigan and shall in all respects be interpreted, enforced and governed under the laws of the State of Michigan.

D. **Captions.** The captions, headings, and titles in this Agreement are intended for the convenience of the reader and not intended to have any substantive meaning and are not to be interpreted as part of this Agreement.

E. **Terminology.** All terms and words used in this Agreement, regardless of the numbers or gender in which they are used, are deemed to include any other number and any other gender as the context may require.

F. **Recitals.** The Recitals shall be considered an integral part of this Agreement.

G. **Amendment.** The Agreement may be amended or an alternative form of the Agreement adopted only upon written agreement and approval of the governing bodies of all parties, except an amendment to remove a Member shall not require agreement or approval of the governing body of the Member being removed. Upon an Amendment to this Agreement being adopted, a copy, certified by the secretary of the Committee, shall be furnished to all Members.

H. **Compliance with Law.** MiWARN shall comply with all federal and State laws, rules, regulations, and orders applicable to this Agreement.

I. **No Third Party Beneficiaries.** Except as expressly provided herein, this Agreement does not create, by implication or otherwise, any direct or indirect obligation, duty, promise, benefit, right of indemnification (i.e., contractual, legal, equitable, or by implication) right of subrogation as to any party's rights in this Agreement, or any other right of any kind in favor of any individual or legal entity

J. **Counterpart Signatures.** This Agreement may be signed in counterpart. The counterparts taken together shall constitute one (1) agreement.

K. **Permits and Licenses.** Each Member shall be responsible for obtaining and maintaining, throughout the term of this Agreement, all licenses, permits, certificates, and

governmental authorizations for its employees/and/or agents necessary to perform all its obligations under this Agreement. Upon request, a Member shall furnish copies of any permit, license, certificate or governmental authorization to the requesting Member.

**L. No Implied Waiver.** Absent a written waiver, no fact, failure, or delay by a party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by any party shall subsequently affect its right to require strict performance of this Agreement.

NOW, THEREFORE, in consideration of the covenants and obligations contained herein, the participating utilities listed here, as a Participating Member duly executes this Water/Wastewater Mutual Aid Agreement this \_\_\_\_ day of \_\_\_\_\_, 2014.

Water/Wastewater Utility or Public Works Agency Authorized Official(s):

By: \_\_\_\_\_

Tina Barton

Title: Clerk

By: \_\_\_\_\_

Bryan K. Barnett

Title: Mayor

Name of Participating Member: CITY OF ROCHESTER HILLS  
1000 Rochester Hills Drive  
Rochester Hills, MI 48309

**(Please note:** Attach a copy of your MiWARN registration form to this document when you submit it. Thank You.