

Mutual Aid and Assistance Agreement for an Ontario Water/Wastewater Agency Response Network (OnWARN)

Memorandum of Understanding

This Memorandum of Understanding (“Agreement”) is made and entered into by public and private water and wastewater utilities, owners, and operating authorities in the Province of Ontario (“Utilities”) that have, by executing this Agreement, manifested their intent to participate in an Ontario program for water/wastewater mutual aid and assistance (“Mutual Aid and Assistance Program”).

Statutory Authority for Municipal Utilities: This Agreement is authorized under Section 20 of the Ontario Municipal Act, 2001 which provides that Municipal 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, the signatory Members hereby establish the Mutual Aid and Assistance Program. 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 Mutual Aid and Assistance Program.

ARTICLE II

DEFINITIONS

- A. Authorized Official – An employee or officer of a Member who under this Agreement is authorized to:
 - 1. Request assistance;
 - 2. Offer assistance;
 - 3. Decline to offer assistance; or
 - 4. Withdraw assistance.
- 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, or could reasonably be beyond the capability of the services, personnel, equipment, and facilities of a Member to fully manage and mitigate internally.

- C. Member – Any public or private water or wastewater utility, owner, or operating authority in Ontario (“Utility”) that manifests intent to participate in the Mutual Aid and Assistance Program by executing this Agreement.
1. Requesting Member – A Member who requests aid or assistance from another Member or Members under the Mutual Aid and Assistance Program.
 2. Responding Member – A Member that provides aid or assistance during a Period of Assistance in response to a request for aid or assistance under the Mutual Aid and Assistance Program.
 3. Non-Responding Member - A Member or Associate Member that does not provide aid or assistance during a Period of Assistance under the Mutual Aid and Assistance Program.
- D. Associate Member – Any participant, approved by the OnWARN Steering Committee, which provides a support role or service for the Mutual Aid and Assistance Program. (For example: any agency, or an association that does not sign this Agreement). An Associate Member is not entitled to vote on any matter as outlined and identified in this Agreement.
- E. Confidential Information - Any document shared with any signatory of this Agreement that is marked confidential, including but not limited to any map, report, note, paper, opinion, letter or e-mail which relates to the system security and vulnerabilities of a Member or Associate Member, and any document that is protected under the Municipal Freedom of Information and Protection of Privacy Act, Freedom of Information and Protection of Privacy Act, Emergency Management and Civil Protection Act, Personal Information Protection and Electronic Documents Act, and Personal Health Information Protection Act, 2004.
- F. Period of Assistance – A specified period of time when a Responding Member assists a Requesting Member. The period commences when personnel, equipment, and/or supplies depart from Responding Member’s facility and ends when the resources return to their facility. This period also includes the utilization of Responding Member personnel that provide a direct support role or service to the Requesting Member as mutually agreed upon, and the period commences when the support personnel are assigned to the Requesting Member’s emergency. All protections identified in this Agreement, including but not limited to indemnification and hold-harmless clauses, apply during this period. The specified Period of Assistance may occur during response to or recovery from an Emergency, as previously defined.
- G. Incident Management System – A system, consistent with internationally recommended practices that provides standardized organizational structures, functions, processes and terminology for use at all levels of emergency response in Ontario.

ARTICLE III
ADMINISTRATION

The Mutual Aid and Assistance Program shall be administered through the OnWARN Steering Committee. In addition to representing the interests of the Members, the OnWARN Steering Committee may include Associate Members as non-voting participants. Under the leadership of the OnWARN Steering Committee Chair, the OnWARN Steering Committee shall coordinate emergency planning and response activities for the Mutual Aid and Assistance Program, and provide administrative oversight and coordination of the Agreement and the associated policies and procedures.

ARTICLE IV
PROCEDURES

The OnWARN Steering Committee shall develop operational and planning procedures for the Mutual Aid and Assistance Program, which may be undertaken in cooperation with Associate Members, at the sole discretion of the OnWARN Steering Committee. These procedures shall be reviewed at least annually and updated as needed by the OnWARN Steering Committee.

The OnWARN Steering Committee shall distribute copies of the policies and procedures to the Members when they are developed or amended.

ARTICLE V
REQUESTS FOR ASSISTANCE

- A. Member Responsibility: Members shall identify an Authorized Official and alternate contacts, related contact information including 24-hour access (e.g. an after-hours number), and maintain information on resources that may be available from the Member for mutual aid and assistance response. Such contact information shall be updated annually or when changes occur, and copies provided to the OnWARN Steering Committee.

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 reasonably 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).

For further clarity, an Emergency under this agreement does not require the Member to declare a state of emergency in accordance with the Emergency Management and Civil Protection Act.

- B. Response to a Request for Assistance – Members are not obligated to respond to a request for assistance from a Requesting Member. 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 Responding Member shall inform the Requesting Member about the type of available resources and the approximate 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 from a Requesting Member. 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 Official’s decisions on the availability of resources shall be final.

ARTICLE VI
RESPONDING MEMBER PERSONNEL

- A. Incident Management System – When providing assistance under this Agreement, the Requesting Member and Responding Member may be organized and may function under the 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, 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) shall keep accurate records of work performed by personnel during the specified Period of Assistance.
- C. Food and Shelter – Whenever practical, Responding Member personnel shall 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 Member personnel, the Responding Member’s designated supervisor is authorized to secure the resources necessary to reasonably meet the needs of its personnel.

Except as provided below, the cost for such resources shall not exceed the Responding Member’s per diem rates or related expense policy for that area. To the extent food and shelter costs exceed the Responding Member’s per diem rates for the area, the Responding Member shall 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 to program existing radios, in order to facilitate communications with local responders and personnel. In lieu of radio equipment, the Requesting Member may make alternative communications arrangements with the Responding Member in order to adequately facilitate coordinated communications during the Period of Assistance.
- 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. Licences and Permits – To the extent permitted by law, Responding Member personnel who hold licences, 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 shall be communicated to the Requesting Member's Authorized Official 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. The Responding Member may assume, in whole or in part, any such loss, damage, expense, or other cost incurred, or may loan such equipment or donate such services to the Requesting Member without charge or cost to the Requesting Member.

- 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) shall 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, costs for fringe benefits, and indirect costs.

- 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. At a minimum, rates for equipment use shall be based on the “Ontario Provincial Standard 127 Schedule of Equipment Rates”. If a Responding Member uses rates different from those in the “Ontario Provincial Standard 127 Schedule of Equipment Rates”, the Responding Member shall provide such rates orally or in writing to the Requesting Member prior to supplying the equipment. Mutual agreement on which rates are used shall be reached in writing prior to dispatch of the equipment. Reimbursement for equipment not referenced on the “Ontario Provincial Standard 127 Schedule of Equipment Rates” shall 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 shall reimburse the Responding Member actual replacement cost, plus handling charges, for use of expendable, consumable, or non-returnable supplies. The Responding Member shall 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 shall be treated as expendable supplies for purposes of cost reimbursement.
- D. Payment Period – The Responding Member shall provide an itemized bill to the Requesting Member for all expenses incurred by the Responding Member while providing assistance under this Agreement. The Requesting Member shall send the itemized bill not later than (90) ninety days 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 shall pay the bill in full on or before the forty-fifth (45th) day following the billing date. The Requesting Member may request additional periods of time within which to pay the itemized bill, and Responding Member shall not unreasonably withhold consent to such request, provided, however, that all payment shall occur not later than one-year after the date a final itemized bill is submitted to the Requesting Member.
- 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 after the Period of Assistance, or longer where required by law.

ARTICLE VIII

DISPUTES

If any controversy or claim arises out of, or relates to, the execution of this Agreement, including, but not limited to, alleged breach of this Agreement, the disputing Members shall first attempt to resolve the dispute by negotiation, followed by mediation and finally shall be settled by arbitration in accordance with the rules of the Ontario Arbitration Act. 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 Requesting Member 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

WORKPLACE SAFETY AND INSURANCE

A. Workplace Safety and Insurance - The Workplace Safety and Insurance Act provides that if an Emergency is declared by the Premier of Ontario or the head of council of a municipality, and a person is sent to assist, the Crown (Government of Ontario) or the municipality, whichever declared the Emergency is considered the employer of that person for the purposes of assessing any accident costs. However, the worker's regular employer (Responding Member) continues to be responsible for:

- Maintaining employment benefits as required by section 25 of the Workplace Safety and Insurance Act,
- Complying with the obligation to co-operate in the early and safe return to work of the worker (section 40), and,
- Complying with the obligation to re-employ the worker (section 41) if it applies.

Any costs incurred by the worker's regular employer (Responding Member) in meeting these obligations are reimbursed by the Crown or the municipality, whichever is applicable.

The Responding Member is responsible for providing Workplace Safety and Insurance Board (WSIB) benefits and administering WSIB for its employees. The Requesting Member shall reimburse the Responding Member for all costs, benefits, and expenses associated with WSIB and other employee claims that arise from or are related to providing assistance under this Agreement.

- B. Hold Harmless - The Requesting Member shall indemnify and hold the Responding Member harmless from and against any and all liability for loss, including, but not limited to, damage, cost or expense which the Responding Member may incur by reason of bodily injury, including death, to any person or persons, or by reason of damage to or destruction of any property, including the loss of use thereof, which result from furnishing Emergency assistance and whether or not due in whole or in part to any act, omission, or negligence of the Responding Member.

Where payments are made to Responding Member's employees under WSIB or any similar law for bodily injury or death resulting from furnishing emergency assistance, Requesting Member shall make reimbursement to Responding Member to the extent such payment increases the Responding Member's WSIB or disability benefits costs, whether such increase in costs occurs in the form of an increase in premiums or contributions or in the form of reduction in dividends or premium refunds, or otherwise.

In the event any claim or demand is made or suit or action is filed against the Responding Member alleging liability for which Requesting Member shall indemnify and hold harmless the Responding Member under the above paragraphs, the Responding Member shall promptly notify the Requesting Member thereof, and the Requesting Member, at its sole cost and expense, shall settle, compromise or defend the same in such manner as it in its sole discretion deems necessary or prudent.

ARTICLE XII

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 in respect 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

Each Member 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.

- A. Members shall maintain at minimum the following insurance policies;
- a. Commercial General Liability (CGL) insurance for bodily injury (including death) and property damage in an amount of not less than Five Million Dollars (\$5,000,000.00). This CGL insurance shall be written to a minimum of the current IBC 2100 form or the most recent version and such policy shall include:
 - i. the Responding Member as an additional insured;
 - ii. a cross liability clause;
 - iii. products and completed operations coverage;
 - iv. broad form contractual liability coverage;
 - v. non-owned automobile liability coverage; and
 - vi. operation of attached machinery;
 - b. Automobile third party liability insurance in an amount of not less than Two Million Dollars (\$2,000,000.00); and
 - c. All Risk Property insurance that covers any property on loan from a Responding Member
- B. In the event of a claim requiring the Responding Member to incur costs as a result of providing assistance under this Agreement, the Requesting Member shall be responsible for reimbursing the Responding Member for the payment of every deductible amount provided in the insurance described in Article XIII (A), above.
- C. The Requesting Member covenants and agrees that the insurance obligations mentioned above will not be construed to and will in no manner limit or restrict the liability of the Requesting Member or its responsibility under Article IX.

ARTICLE XIV

CONFIDENTIAL INFORMATION

Subject to the terms and conditions of the Municipal Freedom of Information and Protection of Privacy Act, Freedom of Information and Protection of Privacy Act, Emergency Management and Civil Protection Act, Personal Information Protection and Electronic Documents Act and Personal Health Information Protection Act, 2004, as appropriate, Members and Associate Members shall maintain in the strictest confidence and shall take all reasonable steps necessary to prevent the disclosure of any Confidential Information under this Agreement. Except when compelled by this agreement to provide information to a Member, 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 on the Member once the Member's authorized representative executes this Agreement and the OnWARN Steering Committee Chair receives the executed Agreement. The OnWARN Steering Committee Chair shall maintain a list of all Members and Associate Members, and make the list available to all Members and Associate Members.

ARTICLE XVI
WITHDRAWAL

A Member may withdraw from this Agreement by providing written notice of its intent to withdraw to the OnWARN Steering 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 this Agreement. Modifications to this Agreement may be due to programmatic operational changes to support this Agreement, legislative action, creation of a mutual aid and assistance agreement, or other developments. Modifications require a simple majority vote of Members. The OnWARN Steering Committee Chair shall 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 this 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 shall 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 shall be without effect.

ARTICLE XXI
COUNTERPARTS

This Agreement may be executed and delivered by the parties in counterparts, each of which shall constitute an original and may be delivered by facsimile, email or other functionally equivalent electronic means of communication, and those counterparts taken together shall constitute one and the same instrument.

Now, therefore, in consideration of the covenants and obligations set forth in this Agreement, the Utility listed here manifests its intent to be a Member of the Ontario Water/Wastewater Agency Response Network by executing this Mutual Aid and Assistance Agreement on this _____ day of _____ 20____.

Utility: _____

By: _____

Title: _____

Please Print Name

By: _____

Title: _____

Please Print Name