



CITY OF TONKA BAY
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ITEM NO. 8A

Memo

To: Mayor and City Council
Lindy Crawford, City Administrator

From: Robin Bowman, Public Works Superintendent

Date: June 23, 2015

Re: Request to become a MnWARN Member

This is a follow up from our last meeting on June 9, 2015 when the Council requested information from the League of Minnesota Cities mutual aid relating to insurance. The MnWARN application questionnaire, mutual aid agreement, and resolution are also attached for your review.

Funding

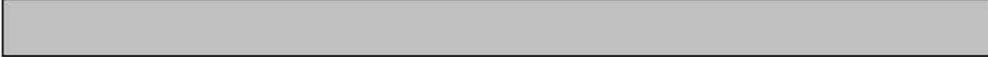
None needed. It is free to belong.

Attachments

League of Minnesota Cities understanding how insurance works in mutual aid situations
MnWARN Mutual Aid Agreement
MnWARN Application Questionnaire
Resolution

Council Action Requested:

Consider a motion to adopt resolution approving MnWARN membership.



MINNESOTA WATER AGENCY RESPONSE NETWORK (MnWARN) MUTUAL AID AGREEMENT

This Minnesota Water Agency Response Network (MnWARN) Mutual Aid Agreement is made and entered into by the undersigned Parties.

WHEREAS, the Parties hereto are authorized by law or home rule charter to establish a water, wastewater or storm water utility; and

WHEREAS, the Parties hereto have established a water, wastewater and/or storm water utility; and

WHEREAS, the Parties recognize that an Emergency may require Assistance in the form of personnel, equipment and supplies from a Utility outside the Governmental Unit; and

WHEREAS, the governing bodies of the Parties have investigated the facts and determined that it is in their best interests to authorize their Utilities to work cooperatively with another Party's Utilities when there is an Emergency; and

WHEREAS, Minnesota Statutes, Section 471.59 authorizes the Parties by agreement of their governing bodies to jointly or cooperatively exercise any power common to them.

NOW, THEREFORE, in consideration of the mutual covenants made herein, the Parties agree as follows:

ARTICLE I PURPOSE

The Parties recognize that in an Emergency, their Utilities may require Assistance in the form of personnel, equipment and supplies from outside the area of impact. The purpose of this Agreement is to provide a framework, in the event of an Emergency, for the Parties to participate in an intrastate program for mutual aid assistance to provide water, wastewater and storm water utility services. The Parties authorize their Utilities to cooperatively assist other Party's Utilities when there is an Emergency, subject to the discretion of the Responding Party's Authorized Official as set forth in Article IV.

**ARTICLE II
DEFINITIONS**

- A. Agreement — This Water Agency Response Network Mutual Aid Agreement.
- B. Assistance — Resources, including but not limited to personnel, equipment, material and supplies that a Responding Party's Utility provides to a Receiving Party's Utility.
- C. Authorized Official — An employee or official of a Party's Utility that is authorized by the Party's governing body to request Assistance or provide Assistance under this Agreement.
- D. Emergency — Any occurrence that is, or is likely to be, beyond the control of the services, personnel, equipment or facilities of a Party's Utility.
- E. Governmental Unit — A city, county or township in Minnesota or a city's public utilities commission.
- F. MnWARN — The framework for public water, wastewater and storm water utilities in Minnesota to assist other public water, wastewater and storm water utilities when there is an Emergency that requires Assistance from another Utility. The framework includes this Agreement and other resources to be developed and coordinated by the Statewide Committee to implement the purpose of this Agreement.
- 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.
- H. Party/Parties — One or more governmental units that has a water, wastewater or stormwater utility that executes this Agreement or adopts this Agreement by resolution pursuant to Article XIV.
- I. Period of Assistance — The period of time when a Responding Party assists a Receiving Party. The period commences when personnel, equipment or supplies depart from a Responding Party's facility and ends when the resources return to their facility. All protections identified in the Agreement apply during this period. The Period of Assistance may occur during response to or recovery from an Emergency.
- J. Receiving Party — A Party who requests and receives Assistance under this Agreement.
- K. Responding Party — A Party that provides Assistance to another Party pursuant to this Agreement.
- L. Statewide Committee — The committee responsible for overseeing MnWARN on a statewide level.
- M. Steering Committee — The leadership group that established MnWARN and the development of this Agreement.
- N. Utility/Utilities — A water, wastewater and/or storm water utility of a Party.

**ARTICLE III
ADMINISTRATION**

A. Statewide Committee.

1. Voting Members. MnWARN shall be administered through a Statewide Committee. The Statewide Committee shall be comprised of nine (9) voting members. The voting members of the Statewide Committee shall be comprised as follows: (i) an employee or official of a Utility located in Region 1 of the Minnesota Division of Homeland Security and Emergency Management Regions; (ii) an employee or official of a Utility located in Region 2 of the Minnesota Division of Homeland Security and Emergency Management Regions; (iii) an employee or official of a Utility located in Region 3 of the Minnesota Division of Homeland Security and Emergency Management Regions; (iv) an employee or official of a Utility located in Region 4 of the Minnesota Division of Homeland Security and Emergency Management Regions; (v) an employee or official of a Utility located in Region 5 of the Minnesota Division of Homeland Security and Emergency Management Regions; (vi) an employee or official of a Utility located in Region 6 of the Minnesota Division of Homeland Security and Emergency Management Regions; (vii) an employee or official of the Minnesota Rural Water Association; (viii) a representative from the Minnesota Section of the American Water Works Association; and (ix) a representative of the Minnesota Wastewater Operator's Association.
 - a. Initial Voting Members. The initial voting members representing the six regions of the Minnesota Division of Homeland Security and Emergency Management Regions shall be selected by the Steering Committee. The other three voting members shall be selected by the organization they represent.
 - b. Subsequent Voting Members. The appointment or election of subsequent voting members shall be done in accordance with bylaws to be adopted by the Statewide Committee.
 - c. Terms. The terms of the voting members shall be established by the bylaws to be adopted by the Statewide Committee.
 - d. Changes. The Statewide Committee may change the number or composition of the voting members in accordance with its bylaws.
2. Advisory Members. There shall be at least six (6) advisory members of the Statewide Committee who shall not be entitled to vote. The advisory member shall consist of a representative to be selected by each of the following organizations: (i) the Minnesota Pollution Control Agency; (ii) the Minnesota Department of Health; (iii) Minnesota Homeland Security and Emergency Management; (iv) the Association of Minnesota Emergency Managers; (v) the Minnesota Municipal Utilities Association; and (vi) the League of Minnesota Cities. The voting members of the Statewide Committee may change the number or composition of the advisory members in accordance with its bylaws. The terms of the advisory members shall be established by the bylaws of the Statewide Committee.
3. Officers. The Statewide Committee shall have the following officers: a Chair, a Vice-Chair and a Secretary. The initial officers shall be elected by the Statewide Committee at its first meeting. The terms of the initial officers and subsequently elected officers

shall be established by the bylaws of the Statewide Committee. The officers shall have the following powers:

- a. Chair. The Chair shall have no more power than any other member of the Statewide Committee except that the Chair shall act as the presiding officer at all Statewide Committee meetings and may have other duties as assigned from time to time and prescribed by the Statewide Committee.
 - b. Vice-Chair. The Vice-Chair shall act as the presiding officer at any Statewide Committee meeting not attended by the Chair and shall perform the Chair's duties in the Chair's absence. The Vice-Chair may have other duties as assigned from time to time and prescribed by the Statewide Committee.
 - c. Secretary. The Secretary shall be responsible for ensuring that minutes are prepared for all Statewide Committee meetings. The Secretary shall also keep all books and records of the Statewide Committee and shall give all notices required by law, and may have other duties as assigned from time to time and prescribed by the Statewide Committee. The Statewide Committee may delegate all or part of the Secretary's duties required under this Section to another person; provided that such delegation shall not relieve the Secretary of ultimate responsibility for these duties
4. Powers. The Statewide Committee shall have the following powers:
- a. To coordinate emergency planning and response activities of Utilities in coordination with the emergency management and public health system of the State;
 - b. To adopt policies and procedures to further the purpose of MnWARN;
 - c. To establish committees, including regional committees, to assist in implementing the purpose of MnWARN;
 - d. To develop a resource list of personnel, equipment, supplies and other resources that may be used to provide Assistance;
 - e. To establish a website to facilitate the Parties' use of MnWARN;
 - f. To develop protocols, forms or procedures for Parties to request assistance;
 - g. To develop educational materials; and
 - h. To develop training materials and conduct training for Parties.
5. Meetings. The Statewide Committee shall hold meetings as follows:
- a. Organizational Meeting. An organizational meeting shall be held at a time and place to be determined by the Steering Committee.
 - b. Regular Meetings. Thereafter, the Statewide Committee shall meet at least annually. A schedule of regular meetings may be adopted by the Statewide

Committee at the organizational meeting. A schedule of regular meetings may be changed from time to time as deemed necessary by the Statewide Committee.

- c. Special Meetings. Special meetings of the Statewide Committee may be called by the Chair and must be called by the Chair upon written request of two Statewide Committee members.
- d. Quorum. The Statewide Committee shall not take official action unless a majority of the voting members are present in person or via electronic communication.

ARTICLE IV REQUESTS FOR ASSISTANCE

- A. Party Responsibility. The Parties shall identify an Authorized Official and one or more alternates; provide contact information including 24-hour access; and maintain the resource information required contained in the member information form to be developed by the Statewide Committee. The Parties shall update this information as required by the bylaws.

In the event of an Emergency, a Party's Authorized Official may request Assistance from a Party's Utility. The Authorized Official must specifically state that Assistance is being requested under MnWARN to activate the provisions of this Agreement. Requests for Assistance can be made orally or in writing. When made orally, the request for Assistance shall be prepared in writing as soon as practicable. Requests for Assistance shall be directed to the Authorized Official of a Party. Specific protocols for requesting Assistance shall be established by the Statewide Committee.

- B. Response to a Request for Assistance. After a Party receives a request for Assistance, the Authorized Official should evaluate if resources are available to respond to the request for Assistance. Following the evaluation, the Responding Party's Authorized Official shall inform, as soon as possible, the Receiving Party's Authorized Official if it can provide Assistance. If Assistance is provided, the Responding Party shall inform the Receiving Party about the type of available resources and the approximate arrival time of such resources.
- C. Discretion of Responding Party's Authorized Official. Adoption of this Agreement does not create any duty to provide Assistance. When a Party receives a request for Assistance, the Authorized Official shall have absolute discretion to provide Assistance or to not provide Assistance. A Party's decision to provide Assistance or not provide Assistance shall be final. No Party nor any employee or officer of any Party shall be liable to any other Party or to any person for failure of any Party to furnish Assistance or for recalling Assistance.

ARTICLE V RESPONDING PARTY PERSONNEL

- A. National Incident Management System (NIMS). When providing Assistance under this Agreement, the Requesting Party's Utility and the Responding Party's Utility shall be organized and function under NIMS.
- B. Control. The personnel of a Responding Party providing Assistance shall be under the direction and control of the Receiving Party until the Responding Party's Authorized Official withdraws Assistance. The Receiving Party's Authorized Official shall coordinate response

activities with the Responding Party's Authorized Official. Whenever practical, Responding Party personnel should plan to be self sufficient for up to 72 hours.

- C. Food and Shelter. The Receiving Party shall supply reasonable food and shelter for Responding Party personnel for Assistance that is provided for more than 72 hours. If the Receiving Party is unable to provide food and shelter for a Responding Party's personnel, the Responding Party's Authorized Official or designee is authorized to secure food and shelter for its personnel and shall be entitled to reimbursement for such expenses from the Receiving Party. Reimbursement for food and shelter shall reflect the actual costs incurred by the Responding Party. If receipts are not available, the Responding Party cannot request reimbursement in excess of the State per diem rates for that area.
- D. Communication. The Receiving Party shall provide Responding Party personnel with radio equipment as available, or radio frequency information to program existing radios, in order to facilitate communication among personnel providing Assistance.
- E. Status. Unless otherwise provided by law, the Responding Party'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 Party 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 Period of Assistance.
- G. Right to Withdraw. The Responding Party'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 Receiving Party's Authorized Official as soon as possible.

ARTICLE VI COST REIMBURSEMENT

Unless otherwise mutually agreed in whole or in part, the Receiving Party shall reimburse the Responding Party for each of the following categories of costs incurred while providing Assistance during the Period of Assistance.

- A. Personnel. A Responding Party shall be reimbursed for its actual costs paid to personnel providing Assistance during the Period of Assistance. The Responding Party's designated supervisor(s) must keep accurate records of work performed by personnel during the Period of Assistance. Reimbursement to the Responding Party must consider all personnel costs, such as salaries or hourly wages, including overtime, and costs for fringe benefits and indirect costs.
- B. Equipment. The Receiving Party shall reimburse the Responding Party for the use of equipment during a Period of Assistance pursuant to the Responding Party's rate schedule. If the Responding Party does not have a rate schedule, the rates for equipment use must be based on the Federal Emergency Management Agency's (FEMA) Schedule of Equipment Rates. If a Responding Party uses rates different from those in the FEMA Schedule of Equipment Rates, the Responding Party must provide such rates in writing to the Receiving Party prior to supplying Assistance. Reimbursement for equipment not referenced on a Party's rate schedule or the FEMA Schedule of Equipment Rates must be developed based on actual recovery of costs.

- C. Materials and Supplies. The Receiving Party must reimburse the Responding Party in kind or at actual replacement cost, plus handling charges, for use of expendable or non-returnable supplies. The Responding Party must not charge direct fees or rental charges to the Receiving Party for other supplies and reusable items that are returned to the Responding Party in a clean, damage-free condition. Reusable supplies that are returned to the Responding Party with damage must be treated as expendable supplies for purposes of cost reimbursement.
- D. Payment Period. The Responding Party must provide an itemized bill to the Receiving Party for all expenses it incurred as a result of providing Assistance under this Agreement. The Responding Party must send the itemized bill not later than ninety (90) days following the end of the Period of Assistance. The Receiving Party must pay the undisputed portion of 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, and, once delinquent, the bill accrues interest at the standard rate of interest charged by the Responding Party for unpaid bills. If the Responding Party does not have a standard rate, the interest rate shall be the rate of prime, as reported by the *Wall Street Journal*, plus two percent (2%) per annum. Any undisputed amount must be resolved using the procedures set forth in Article VII.

ARTICLE VII DISPUTES

The Parties agree to act in good faith to undertake resolution of disputes, in an equitable and timely manner and in accordance with the provisions of this Agreement. If disputes cannot be resolved informally by the Parties, the following procedures shall be used:

- A. Mediation. If there is a failure between Parties to resolve a dispute on their own, the Parties shall first attempt to mediate the dispute. The Parties shall agree upon a mediator, or if they cannot agree, the Statewide Committee Chair shall select a mediator. If the Chair of the Statewide Committee, has a conflict of interest, the duty for selecting a mediator shall pass to the Vice-Chair.
- B. Arbitration. If the dispute remains unresolved following mediation, the dispute shall be submitted to arbitration under the Uniform Arbitration Act, Minnesota Statutes, Sections 572.08-.30. If the Parties cannot agree on one or more arbitrators, the arbitrator(s) shall be selected using the same procedure set forth for selecting a mediator. The decision of the majority of the arbitrators shall not be binding upon the Parties. If the arbitration decision is not accepted, the Parties may pursue any other legal remedy to resolve the dispute.

ARTICLE VIII RECEIVING PARTY'S DUTY TO INDEMNIFY

For the purposes Minnesota Municipal Tort Liability Act, Minnesota Statutes, Chapter 466, the employees and officers of the Responding Party are deemed to be employees (as defined in Minnesota Statutes, Section 466.01, subdivision 6) of the Receiving Party.

The Receiving Party shall defend, indemnify and hold harmless, the Responding Party, its officers, employees, volunteers and agents from all claims, loss, damage, injury, and liability of

every kind, nature, and description, directly or indirectly arising from the Responding Party's Assistance during the Period of Assistance. The scope of the Receiving Party'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 Receiving Party, or faulty workmanship or other negligent acts, errors, or omissions by the Responding Party personnel. The Receiving Party shall not be required to defend and indemnify the Responding Party for any willful or wanton misconduct of the Responding Party or its officer, employees, volunteers or agents. Under no circumstances, however, shall a party be required to pay on behalf of itself and other parties, any amounts in excess of the limits of liability established in Minnesota Statutes, Chapter 466 applicable to any one party. The intent of this article is to impose on each Receiving Party a limited duty to defend and indemnify a Responding Party for claims arising within the Receiving Party's jurisdiction subject to the limits of liability under Minnesota Statutes, Chapter 466. The purpose of creating this duty to defend and indemnify is to simplify the defense of claims by eliminating conflicts among defendants and to permit liability claims against multiple defendants from a single occurrence to be defended by a single attorney.

The Receiving Party's duty to indemnify is subject to, and shall be applied consistent with, the conditions set forth in Article X.

ARTICLE IX DAMAGE TO EQUIPMENT

Each Party shall be responsible for damages to or loss of its own equipment. Each Party waives the right to sue any other Party for any damages to or loss of its equipment, even if the damages or losses were caused wholly or partially by the negligence of any other Party or its officers, employees, or volunteers.

ARTICLE X WORKERS' COMPENSATION

Each Party shall be responsible for injuries or death of its own personnel. Each Party will maintain workers' compensation insurance or self-insurance coverage, covering its personnel while they are providing Assistance pursuant to this Agreement. Each Party waives the right to sue another Party for any workers' compensation benefits paid to its own personnel while they are providing Assistance pursuant to this Agreement. Each Party waives the right to sue another Party for any workers' compensation benefits paid to its own employee or volunteer or their dependents, even if the injuries were caused wholly or partially by the negligence of another Party or its officers, employees or volunteers.

ARTICLE XI INSURANCE

Parties to this Agreement shall maintain the following liability coverages: (1) commercial general liability; and (2) automobile liability, including owned, hired, and non-owned automobiles. Each policy shall have a limit at least equal to the maximum municipal liability limit in Section 466.04, subd. 1. If the policy contains a general aggregate limit, the general aggregate limit shall not be less than double the maximum municipal liability limit in Section 466.04, subd. 1.

**ARTICLE XII
WITHDRAWAL**

A Party may withdraw from this Agreement by providing written notice of its intent to withdraw to the Statewide Committee Secretary. Withdrawal takes effect 60 days after notice is sent.

**ARTICLE XIII
INTRASTATE AND INTERSTATE MUTUAL AID AND ASSISTANCE PROGRAMS**

To the extent practicable, Parties to this Agreement are encouraged to participate in mutual aid and assistance activities conducted under the State of Minnesota Intrastate Mutual Aid and Assistance Program and the Interstate Emergency Management Assistance Compact (EMAC). Parties may voluntarily agree to participate in an interstate Mutual Aid and Assistance Program for Utilities through this Agreement if such a Program were established.

**ARTICLE XIV
NEW MEMBERS**

Other Governmental Units may be added to this Agreement upon approval of their governing body as evidenced by adoption of the resolution attached as Exhibit I to this Agreement and execution by the Governmental Unit's authorized representatives. A Governmental Unit shall not become a Party to this Agreement until a certified copy of the resolution is received by the Statewide Committee Secretary. The Statewide Committee Secretary shall maintain a master list of all Parties to this Agreement.

**ARTICLE XV
GENERAL PROVISIONS
MODIFICATION**

- A. Modification. No provision of this Agreement may be modified, altered or rescinded by individual parties to the Agreement. Modifications to this Agreement may be due to programmatic operational changes to support the Agreement. Modifications require a simple majority vote of the Parties to this Agreement. The Statewide Committee Secretary shall provide written notice to all Parties of approved modifications to this Agreement. Approved modifications take effect 60 days after the date upon which notice is sent to the Parties.
- B. Signatory Indemnification. In the event of a liability, claim, demand, action or proceeding of whatever kind or nature arising out of a Period of Assistance, the Parties who receive and provide Assistance shall indemnify and hold harmless those Parties whose involvement in the transaction or occurrence that is the subject of such claim, action, demand or other proceeding is limited to execution of this Agreement.
- C. Prohibition on Third Parties and Assignment of Rights/Duties. This Agreement is for the sole benefit of the Parties 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 are without effect.
- D. Notice. A Party who becomes aware of a claim or suit that in any way, directly or indirectly, contingently or otherwise, affects or might affect other Parties to this Agreement shall

provide prompt and timely notice to the Parties who may be affected by the suit or claim. Each Party reserves the right to participate in the defense of such claims or suits as necessary to protect its own interests.

- E. Effective Date. This Agreement shall be effective after approval by the Parties' governing body and execution by the Parties' authorized representatives.
- F. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Minnesota.
- G. Captions. Article and section headings contained in this Agreement are included for convenience only and form no part of the Agreement among the Parties.
- H. Waivers. The waiver by a Party of any breach or failure to comply with any provision of this Agreement by another Party shall not be construed as, or constitute a continuing waiver of such provision or a waiver of any other breach of or failure to comply with any other provision of this Agreement.
- I. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
- J. Savings Clause. If any court finds any article, section or portion of this Agreement to be contrary to law or invalid, the remainder of the Agreement will remain in full force and effect.

IN WITNESS WHEREOF, the Parties, by action of their respective governing bodies, caused this Agreement to be approved on the dates below.

City of Tonka Bay, Minnesota

The City Council of Tonka Bay, Minnesota duly approved this Agreement on the

_____ day of _____, 20__.

By: _____

Its Mayor

And: _____

Its Clerk

EXHIBIT I

RESOLUTION AUTHORIZING GOVERNMENTAL UNIT TO BE A PARTY TO MINNESOTA WATER AGENCY RESPONSE NETWORK (MnWARN)

WHEREAS, Minnesota Statutes, Section 471.59 authorizes governmental units by agreement of their governing bodies to jointly or cooperatively exercise any power common to them;

WHEREAS, MnWARN has been established by the adoption of a Mutual Aid Agreement (the Agreement) among Governmental Units to allow their water, wastewater and storm water utilities to assist each other in case of an emergency;

WHEREAS, the Agreement allows other governmental units to become a party to the Agreement by the adoption of this Resolution and sending notice to the Secretary of the Statewide Committee for MnWARN; and

WHEREAS, the governing body of [name of governmental unit] considers it to be in the best interests of the City of Tonka Bay to be a party to the Agreement.

NOW, THEREFORE, BE IT RESOLVED, that City of Tonka Bay:

1. Authorizes [position title of designated employee or official] and [position title of designated employee or official] to sign this resolution evidencing the intent of [name of governmental unit] to be a party to MnWARN; and
2. [Name of designated employee or official] is directed to send a certified copy of this resolution and a completed membership information form to the Secretary of the Statewide Committee of MnWARN; and
3. [Name of political subdivision] agrees to comply with all terms of the Agreement. IN WITNESS WHEREOF, [name of governmental unit], by action of its governing body, caused this Resolution to be approved on [Month/Date/Year].

By: _____

Its _____

And: _____

Its _____