

AUTHORIZING THE MAYOR TO ENTER INTO THE OHIO WATER/WASTEWATER
AGENCY RESPONSE NETWORK MUTUAL AID AGREEMENT AND PROVIDING FOR
IMMEDIATE ENACTMENT

WHEREAS, certain Ohio water and wastewater agencies (the "Members") have formed the "Ohio Water/Wastewater Agency Response Network," (Ohio WARN), to share resources and to assist each other in the form of personnel, equipment, materials and supplies in the event of emergencies that disrupt service department services; and

WHEREAS, the Members have agreed to enter into the "Ohio 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, this Council deems it in the best interest of the City to participate in the "Ohio Water/Wastewater Agency Response Network Mutual Aid Agreement".

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TALLMADGE, COUNTIES OF SUMMIT AND PORTAGE, STATE OF OHIO:

SECTION 1. That the Mayor is authorized to enter into the "Ohio Water/Wastewater Agency Response Network Mutual Aid Agreement," which is attached and incorporated herein as Exhibit A.

SECTION 2. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees on or after November 28, 1975 that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this ordinance is necessary to provide for and to accomplish the purposes herein set forth, which are conducive to the health, safety, and welfare of the citizens of Tallmadge. For that reason, provided this ordinance shall receive the affirmative vote of three-fourths of the members of Council and approval by the Mayor, it shall be enacted immediately and shall be of immediate effect.

Passed: _____

Susan E. Burton, Clerk of Council
MER/jt
12/13/21
Filed with the Mayor _____

Dennis K. Loughry, President of Council

Approved:

David G. Kline, Mayor

This _____ day of _____, 2022

Committee Assignment: _____

Readings: 1st _____ 2d _____ 3d _____

For: _____ Against: _____ Abstain: _____

Note: _____

OHIO WATER/WASTEWATER AGENCY RESPONSE NETWORK

MUTUAL AID AGREEMENT

RECITALS

WHEREAS, certain Ohio water and wastewater agencies (the “Members”) have formed the “Ohio Water/Wastewater Agency Response Network,” (Ohio WARN), 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 Members have agreed to enter into this “Ohio 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 this Agreement, the Parties express their intent to participate in a program for Mutual Aid and Assistance within the State of Ohio.

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

ARTICLE I. PURPOSE

Recognizing that emergencies may overwhelm Ohio WARN Members to provide services to their customers which may require them to seek assistance in the form of personnel, equipment and supplies from outside the area of impact, the signatory utilities to this Agreement hereby establish within the State of Ohio an Intrastate Program for Mutual Aid and Assistance. Through the Ohio WARN Program, Members shall coordinate voluntary response activities and shall share voluntary resources during emergencies as described in this Agreement.

ARTICLE II. DEFINITIONS

- A. **Agreement** – The Ohio Water/Wastewater Agency Response Network Mutual Aid Agreement.
- B. **Authorized Official** – An employee of a Member who is authorized by the Member’s governing board or management to request assistance or offer assistance under this Agreement.
- C. **Emergency** – A natural or man-made 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.
- D. **Member** – Any public or private water or wastewater utility or its principals that executes this Agreement.

- E. **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.
- F. **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 the Responding Member’s facility (portal to portal). All protections identified in the Agreement apply during this period. The specified Period of Assistance may occur during response to or recovery from an emergency, as previously defined.
- G. **Requesting Member** – A Member who requests assistance in accordance with the terms and conditions of this Agreement and the Mutual Aid and Assistance Program.
- H. **Responding Member** – A Member that responds to a request for assistance under the terms and conditions of this Agreement and the Mutual Aid and Assistance Program.
- I. **Statewide 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., public health, emergency management, rural water, water utility organizations) that shall administer the WARN Program for the state.
- J. **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 a Statewide Committee. The purpose of a Statewide Committee is to provide coordination of the Mutual Aid and Assistance Program before, during and after an emergency. The Statewide 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 Statewide Committee members shall plan and coordinate emergency planning and response activities for the Mutual Aid and Assistance Program.

ARTICLE IV. PROCEDURES

In coordination with the emergency management and public health systems of Ohio, the Statewide Committee shall develop operational and planning procedures for the OH WARN Program. These procedures shall be reviewed at least annually and updated as needed. The Members recognize that the Statewide Committee, set forth in Article III, above, shall develop an OH WARN Program Manual and/or an OH WARN Handbook to set forth general procedures and standards that shall be followed by each Member.

It is the responsibility of each Member to develop its own operational and planning procedures that 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. 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 provided in the required procedures (Article IV).

- 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 Authorized 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 Member(s). Whenever practical, Responding Member personnel must be self-sufficient for up to 72 hours.
- C. **Food & 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 Ohio for that area. The Requesting Member remains responsible for reimbursing the 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, Responding Member personnel who hold licenses, certificates or permits issued by the State of Ohio 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 and related to their respective credentials during the specified Period of Assistance.

- G. **Right to Withdraw** – The Responding Member’s Authorized Official retains the right to withdraw some or all of its resources at any time. Notice of intention to withdraw must be communicated to the Requesting Member’s Authorized Official as soon as possible. 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 a practicable after the oral notice.

ARTICLE VII. COST REIMBURSEMENT

Unless otherwise mutually agreed in writing 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 supervisor(s) designated by the Responding Member(s) must keep accurate records of work performed by personnel during the specified Period of Assistance. Requesting Member reimbursement to the Responding Member must consider all personnel costs, including salaries or hourly wages, costs for fringe benefits and indirect costs. Fringe benefit calculations shall be based on Federal Emergency Management Agency’s (FEMA) defined fringe benefits. If a Responding Member intends to calculate fringe benefits differently than those established by FEMA, the Responding Member must provide such calculations in writing to the Requesting Member’s Authorized Official prior to deploying personnel.
- 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 Assistance 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 repair or replacement of the damaged equipment. Damage must be reasonably attributable to the specific response and taking into consideration normal wear and tear.

- C. **Materials & Supplies** – The Requesting Member must reimburse the Responding Member in kind or at actual replacement cost, plus handling charges, for use of expendable or non-returnable supplies. The Responding Member must not charge direct fees or rental charges to the Requesting Member for other supplies and reusable items that are returned as soon as practicable to the Responding Member in a clean, damage-free condition. Reusable supplies that are returned to the Responding Member with damage must be treated as expendable supplies for purposes of cost reimbursement.
- D. **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 (60th) 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 (61st) day following the billing date.
- 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. DISPUTES

All disputes between two or more Members arising from participation in this Agreement, which cannot be settled through negotiation, shall be submitted to arbitration before a panel of three persons chosen from the Members of this Agreement, excluding those Members that are parties to the dispute. The Parties to the dispute shall determine whether the arbitration is binding or non-binding.

Each party to the dispute shall choose one panel member and those panel members shall agree on one additional panel member. The panel shall adopt rules of procedure and evidence, shall determine all issues in dispute by majority vote and shall assess damages. Any court of competent jurisdiction may enter the judgment rendered by the arbitrators as final judgment that is binding on the parties.

ARTICLE IX INSURANCE

Each Member shall bear the risk of its own actions, as it does with its day-to-day operations, and determine for itself what kinds of insurance, and in what amounts, it should carry. Nothing in this Agreement shall act, or be construed, as a waiver of any statutory or common-law immunity or other exemption or limitation on liability that a Member may enjoy.

ARTICLE X INDEMNITY AND IMMUNITY

IDEMNITY

Neither Party will indemnify or hold harmless the other for any damages awarded in any civil action arising from any action or omission of either Party's officers, employees, agents, contractors, subcontractors or volunteers acting under this Agreement. Neither Party shall act or be deemed to be acting as agent for the other.

IMMUNITY

Nothing in this Agreement is intended to, and shall not, be construed to constitute a waiver of either Party's defenses, including immunity. Officers, employees, and volunteers of a Responding Member performing services at any place for a Requesting Member in good faith carrying out, complying with, or attempting to comply with this Agreement shall possess the same powers, duties, immunities, and privileges they would ordinarily possess if performing their duties in the jurisdiction in which they are normally officers or employed or rendering services. Such persons shall not be liable for any injury to, or death of, persons or damage to property as the result of performing services under this Agreement during training periods, test periods, practice periods, or other emergency management operations, or false alerts, as well as during any hazard, actual or imminent and subsequently to the same except in cases of willful misconduct. As used in this section, "emergency management volunteer" means only an individual who is authorized to assist any agency performing emergency management during a hazard.

ARTICLE XI 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 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 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 XIII EFFECTIVE DATE

This Agreement shall be effective after the Member's governing authority executes the Agreement and the Statewide Committee receives the Agreement. The Statewide Committee shall maintain a master list of all Members in the state.

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

This Agreement shall continue in force and remain binding on each and every Member until December 31st of the year in which the Member executes the Agreement. This Agreement shall renew automatically for a period of one year upon the completion of the initial term and each subsequent one-year term unless and until such time a Member withdraws from participation in this Agreement.

ARTICLE XIV WITHDRAWAL

A Member may withdraw from this Agreement at any time and for any reason by providing written notice of its intent to withdraw to the Statewide Committee Chair.

ARTICLE XV MODIFICATION

This Agreement may be modified in writing to accommodate operational changes as the Members gain experience with the procedures established by the Agreement and the Ohio WARN. No provision of this Agreement may be modified, altered, or rescinded by individual Members to the Agreement. The Statewide Committee must approve in writing all modification requests.

ARTICLE XVI INTRASTATE & INTERSTATE MUTUAL AID AND ASSISTANCE PROGRAMS

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

ARTICLE XVII 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 Ohio, 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 Ohio. If a Member receives a request to provide information of another Member or a third party, the Member receiving such request shall notify the other Member and they shall jointly agree upon what documentation is to be released.

NOW, THEREFORE, in consideration of the covenants and obligations in this Agreement, the Water and Wastewater Utility listed here manifests its intent to be a party to this Agreement and Member of the Intrastate Mutual Aid and Assistance Program for Water and Wastewater Utilities by executing this Agreement this _____ day of _____, _____.

Water/Wastewater Utility: _____
(Name, address, city)

Authorizing Ordinance/Resolution Number: _____

By: _____

By: _____

Title: _____

Title: _____

By: _____

By: _____

Title: _____

Title: _____