

--	--

TO:	CHAIR AND MEMBERS CIVIC WORKS COMMITTEE MEETING ON MONDAY FEBRUARY 25, 2013
FROM:	JOHN BRAAM, MANAGING DIRECTOR, ENVIRONMENTAL & ENGINEERING SERVICES & CITY ENGINEER
SUBJECT:	ONTARIO WATER/WASTEWATER AGENCY RESPONSE NETWORK

RECOMMENDATION

That, on the recommendation of the Managing Director, Environmental and Engineering Services and City Engineer, the attached proposed by-law BE INTRODUCED at the Municipal Council meeting of March 5, 2013, to approve the Mutual Aid and Assistance Agreement with the Ontario Water / Wastewater Agency Response Network (OnWARN) for a municipal water and wastewater utilities in Ontario and authorizing the Mayor and City Clerk to execute the agreement.

BACKGROUND

In the last decade, various water/wastewater agency response network (WARN) programs have been implemented or are being developed in each state of the United States of America (USA), as well as the Province of Alberta. The program is premised on the principle of "Utilities helping Utilities", and designed as a type of voluntary mutual-aid between water and wastewater utilities within a region. The program is being coordinated in the USA through the American Water Works Association (AWWA).

Many municipalities in Ontario have specific mutual aid agreements between them and a neighbouring municipality for firefighting assistance, and there may be an informal "understanding" that a municipal water or wastewater utility could call upon its neighbouring utility for assistance. In recent years, concern has been raised in respect of this latter informal practice in Ontario with regard to liability, legal and regulatory requirements, and Workplace Safety and Insurance Board (WSIB) requirements.

The WARN program establishes a legal framework where any subscribing utility can call upon the assistance of other subscribing utilities, with the response being provided within the context of a blanket "mutual aid" type of agreement. The blanket agreement would cover all aspects of legal liability, availability of response and the provision of services, and health and safety requirements, to name a few.

DISCUSSION

WARN in Ontario

In previous years, staff of the regional water supply system has investigated the possibility of establishing a mutual-aid type of agreement between the benefiting municipalities of the Lake Huron Primary Water Supply System and the Elgin Area Primary Water Supply System. During the course of the investigation, similar discussions have been undertaken with the Ontario Water Works Association (a Section of the American Water Works Association), the Critical Infrastructure Assurance Program via the Ministry of the Environment, and Emergency Measures Ontario.

--	--

Similar efforts were being undertaken within the Ontario Water Works Association to establish an Ontario-based mutual assistance program, based on the Water/Wastewater Agency Response Network established in the USA. The purpose of a WARN system is to enable municipalities to provide mutual aid in preparing for, and responding to, interruptions in water and wastewater services resulting from natural and man-made disasters. In the event of an emergency, the WARN program is one "tool in the toolbox" for responding to and dealing with significant emergencies which are beyond the immediate capacity of the utility. This is especially beneficial when there is a community-wide, county-wide or greater emergency, wherein a given utility can be more self-sufficient allowing the community emergency response to focus resources in other areas if needed.

Participation in the WARN program does not specifically require a subscribing municipality to respond to any and all calls for assistance, nor does it obligate a subscribing municipality to call upon all subscribers for assistance in the event of an emergency. It also does not require a municipality to formally declare a state of emergency, only that the water or wastewater related circumstance is beyond the capabilities of the municipality.

On April 7, 2011 the OWWA arranged for municipal representatives to attend a workshop entitled "Utilities Helping Utilities: Mutual Aid Response Networks for Water and Wastewater Systems." OWWA sent invitations to a small group of municipalities intending to get a representative sample of the Ontario Water/Wastewater utilities. Municipalities in attendance included Guelph, Sudbury, Peterborough, Durham, London, Waterloo, Niagara, Windsor, Toronto and Midland. An Ontario WARN Leadership Team chaired by Peterborough (Patricia Skopelianos) and co-chaired by London (Andrew Henry, Lake Huron/Elgin Area Water Supply) was established. The responsibilities of the Leadership Team include establishing the OnWARN governance structure and mutual aid agreement and establishing the OnWARN membership network.

Example WARN Program/Scenario

Events such as 9/11, the 1994 Northridge earth-quake, the 1997 Red River flood, and Hurricane Katrina in 2005 highlighted a need for water and wastewater utilities in the USA to create intra-state mutual aid and assistance programs, and further discussions are ongoing with developing inter-state agreements between state WARN programs. WARNs were originally developed because Water and Wastewater utilities require specialized resources; critical infrastructure depends on water services; and promoting mutual aid/assistance meets with emergency preparedness and response requirements.

In 2006 four States implemented WARNs (Florida, California, Louisiana and Texas) and currently forty seven American States as well as the Province of Alberta have developed and implemented WARN initiatives. Delaware, Mississippi and Alaska have not yet fully implemented a WARN, but have started the process.

WARNs have been used successfully in response to many incidents throughout the American States, and there are numerous examples where an Ontario-based WARN program could have been utilized. Some recent examples include:

- The Aylmer Secondary Water System, which supplies water to Central Elgin, Malahide and Aylmer from a pump station located at the Elgin-Middlesex Pump Station site northeast of St. Thomas, experienced a break on the 400mm (16 inch) PVC pipeline at a ravine crossing west of Aylmer in 2007. Given the location of the break and size of the impact, the repair was beyond the immediate capabilities of the contracted operator and its administering municipality. A call for assistance was made to area municipalities, and the City of London responded with the necessary crews and equipment to quickly facilitate the repair.
- In October 2011, Port Hope, Ontario experienced a severe water supply loss after two of their five High-lift pumps at one of their water treatment plants failed, resulting in nearly a 50% loss in water supply to the municipality. A call for assistance was made to municipalities and service providers throughout Ontario to provide assistance, including the provision and retrofit of temporary pump systems.

--	--

- In May 2012, Thunder Bay, Conmee Township and the Municipality of Oliver Paipooonge experienced severe flooding and declared a state of emergency. The severe weather in the region also resulted at a wastewater treatment plant in Thunder Bay being completely flooded, and a call for assistance was made to municipalities and service providers throughout Ontario to provide assistance, including the provision of large portable sewage pumps.

In addition, there are numerous events which can occur that may prompt a municipality to utilize the WARN program if needed, hypothetically including:

- Severe weather (ice, snow, tropical storms/hurricanes, etc.) which cripples the regions electrical distribution network requiring water and sewage pump stations to operate under portable emergency generator power.
- Heavy rainfall resulting in flooding and damage to water and sewage systems, and overwhelmed or flooded wastewater treatment plants.
- Pandemic sickness impacting licensed water and wastewater operators

In 2008 the AWWA studied the benefit of utilities participation in a WARN. The study included literature reviews, consultations with utility managers and a survey. Seventy eight utilities responded to the survey; a significant number were located in North Eastern USA, 11% of water utility respondents represented utilities which served a population greater than 1 million and 16% of the wastewater respondents represented utilities which served a population greater than 1 million. The findings include the following:

- 82% of the 76 respondents provided mutual aid and/or assistance in the last 20 years. The most common forms were personnel (86%), generators (38%), other equipment (67%), vehicles (49%), other parts and supplies (35%), laboratory services (17%). Financial aid, chemicals, and water, were less common (all 11% or less)
- The costs to participate in a WARN, exclusive of the cost of actually providing mutual aid, includes staff time to develop resource listing for databases and legal and planning costs to establish and maintain participation.

Based on the information available at this time, the following has been identified as potential benefits to participation in the proposed Ontario WARN program:

- Establishment of an Ontario Water/Wastewater Agency Response Network (OnWARN) is encouraged by the Ministry of Environment, Emergency Measures Ontario and Environment Canada, as the initiative supports voluntary Federal and Provincial programs aimed at strengthening resiliency of Canada's critical infrastructure. The support of large utilities such as Toronto, London, and Windsor would likely influence other utilities to become members and thereby strengthen the resiliency of the Ontario Water/Wastewater sector as a whole.
- Establishment of a standard mutual aid agreement with other water utilities will help utilities to better predict, track and recover costs associated with providing and receiving mutual aid.
- The mutual aid agreement template developed as part of the OnWARN initiative could, in future, be extended to other parties. For example, the Kansas mutual aid network KASMAP includes gas and electric utilities. The New Hampshire mutual aid network (NHPWMA) includes other public works departments such as transportation and building inspectors.
- An OnWARN would provide an additional forum for municipal water and wastewater utilities to network, and share operational and emergency preparedness information with other utilities. There is an opportunity to work collaboratively, share information and pool resources in the area of emergency planning, as well as the opportunity to develop and participate in joint training sessions and exercises.

--	--

Mutual Aid and Assistance Agreement

The development of the template agreement for the Ontario Water/Wastewater Agency Response Network (OnWARN) has been completed. The agreement has been reviewed by the City of London's Legal Services, as well as the solicitors for the Region of Niagara, the City of Peterborough and the Ontario Clean Water Agency.

Recognizing the significant benefit of joining OnWARN and improving emergency preparedness for the City's water and wastewater services, staff are seeking Council's authorization for the Mayor and Clerk to execute the Agreement (attached to this report) with the Ontario Water / Wastewater Agency Response Network (OnWARN).

Corporate Strategic Plan

The Mutual Aid and Assistance Agreement for an Ontario Water / Wastewater Agency Response Network ("Agreement") will aid the City in meeting Council's Strategic Plan 2011-2014 with specific regard to Sustainable Infrastructure.

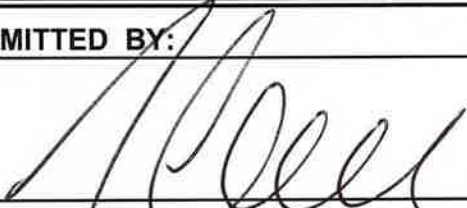

Emergency Management

This program is highly recommended to assist the City of London in our continued efforts to be among the best prepared Cities in Canada. The Ontario Water/Wastewater Agency Response Network will further enhance our response capabilities related to large scale emergencies and provide opportunities not only in the sharing of resources but also expertise in a wide variety of areas. It will form relationships and partnerships that could easily be expanded to other areas and further our ability to keep the public safe.

Acknowledgements

This agreement has been reviewed and endorsed by Engineering, Water and Wastewater Operations, and Legal staff.

This report was prepared by Andrew Henry, P.Eng., Division Manager Regional Water Supply, with the assistance of Dave O'Brien, Division Manager Corporate Security and Emergency Management, John Simon, Division Manager Water Operation, Rick Pedlow, Division Manager Sewer Operations, and Geordie Gauld, Division Manager Pollution Control Operations.

SUBMITTED BY:	RECOMMENDED BY:
	
JOHN LUCAS, P.ENG. DIRECTOR, WATER AND WASTEWATER	JOHN BRAAM, P.ENG. MANAGING DIRECTOR, ENVIRONMENTAL & ENGINEERING SERVICES & CITY ENGINEER

- Appendix A:** Current OnWARN Members
- Appendix B:** By-law

Attachment: Mutual Aid and Assistance Agreement – Ontario Water/Wastewater Agency Response Network

--	--

Appendix A: Current Ontario Water/Wastewater Agency Response Network Members^a

MEMBER	LOCATION
Bayham (Municipality)	Staffordville, ON
Brockville (City)	Brockville, ON
Casselman (Village)	Casselman, ON
Durham (Regional Municipality)	Whitby, ON
Dutton Dunwich (Municipality)	Dutton, ON
Edwardsburgh/Cardinal (Township)	Cardinal, ON
Elgin Area Primary Water Supply System	Greater London Region
Greater Sudbury (City)	Sudbury, ON
Guelph (City)	Guelph, ON
Lake Huron Primary Water Supply System	Greater London Region
Lakefront Utilities Services Inc.	Cobourg, ON
Malahide (Township)	Aylmer, ON
Midland (Town)	Midland, ON
North Glengarry (Township)	Alexandria, ON
Peterborough Utilities Services Inc.	Peterborough, ON
Russel Public Utilities (Township)	Emburn, ON
Smiths Falls (Town)	Smiths Falls, ON
Southgate (Township)/Dundalk Drinking Water & Wastewater Services	Casselman, ON
Southwold (Municipality)	Fingal, ON
St. Thomas (City)	St. Thomas, ON
Strathroy-Caradoc (Municipality)	Strathroy, ON

^a As of 12 December 2012

--	--

**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 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 from outside the area of impact, the signatory Utilities 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 is authorized to:
 - 1. Request assistance;
 - 2. Offer assistance;
 - 3. Refuse to offer assistance; or
 - 4. Withdraw assistance under this Agreement.

- 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 non-Utility participant, approved by the OnWARN Steering Committee, that provides a support role for the Mutual Aid and Assistance Program. (For example: any non-Utility agency or association that does not officially 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, or e-mail which relates to the system 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, or supplies depart from Responding Member’s facility and ends when the resources return to their facility (portal to portal). All protections identified in this Agreement 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 (IMS) – 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. IMS addresses the need for coordinated responses to large-scale and complex incidents and has been developed with input from more than 30 emergency response organizations and stakeholders from Ontario.

**ARTICLE III.
ADMINISTRATION**

The Mutual Aid and Assistance Program shall be administered through OnWARN Steering Committee. In addition to representing the interests of the Members, the OnWARN Steering Committee may include Associate Members as representatives. Under the leadership of the OnWARN Steering Committee Chair, the OnWARN Steering Committee shall plan and coordinate emergency planning and response activities for the Mutual Aid and Assistance Program.

**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, including but not limited to Emergency Management Ontario. These procedures shall be reviewed at least annually and updated as needed by the OnWARN Steering Committee.

**ARTICLE V.
REQUESTS FOR ASSISTANCE**

- A. Member Responsibility: Members shall identify an Authorized Official and alternates; provide 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, provided to the OnWARN Steering Committee.

In the event of an Emergency, a Member’s Authorized Official may request mutual aid and assistance from a participating Member. 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 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).

--	--

- B. Response to a Request for Assistance – Members are not obligated to respond to a request. 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 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 – 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 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) must keep accurate records of work performed by personnel during the specified Period of Assistance.
- C. Food and Shelter – Whenever practical, Responding Member personnel must 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 meet the needs of its personnel. Except as provided below, the cost for such resources must not exceed the Responding Member's per diem rates for that area. To the extent food and shelter costs exceed the Responding Member's per diem rates for the area, the Responding Member must 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 radio, in order 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. 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 must 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 as agreed in whole or in part by both parties; provided, that any Responding Member may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the Requesting Member without charge or cost.

- 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) must 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. As a minimum, rates for equipment use must 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 must provide such rates orally or in writing to the Requesting Member prior to supplying the equipment. 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 “Ontario Provincial Standard 127 Schedule of Equipment Rates” must 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 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 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. Payment Period – The Responding Member must 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 must 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 must 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 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 Responding Members 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 Responding Member alleging liability for which Requesting Member shall indemnify and hold harmless Responding Member under the above paragraphs, Responding Member shall promptly notify Requesting Member thereof, and 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 must be written to a minimum of the current IBC 2100 form or the most recent version and such policy must 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. 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 once the Utility'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.

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 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 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.

Agenda Item # Page #

--	--

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 must 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 must be without effect.

Remainder of this page is intentionally left blank

Agenda Item # Page #

--	--

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 Mutual Aid and Assistance Program by executing this Agreement on this _____ day of _____ 20_____.

Utility: _____

By: _____

Title: _____

Please Print Name

By: _____

Title: _____

Please Print Name