

WisWARN MUTUAL AID AND ASSISTANCE AGREEMENT

Municipalities are vulnerable to a variety of natural and technological disasters and emergencies, and in times of a disaster or emergency, increased emergency response aid and assistance may reduce injury, damage and loss of life and property.

Section 66.0301 of the Wisconsin Statutes authorizes municipalities to enter into an agreement with other municipalities for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law.

Municipalities who sign this Agreement desire to join together to create and participate in an intrastate program for mutual aid and assistance for water and wastewater systems called WisWARN.

The purpose of WisWARN is to provide for cooperation and coordination of activities relating to emergency and disaster mitigation, preparedness, response, and recovery for water and wastewater systems; to prepare for prompt and efficient rescue, care, and treatment of threatened or affected persons; and to provide for the rapid and orderly rehabilitation of persons and restoration of property.

Section 166.03(7) of the Wisconsin Statutes specifically authorizes municipalities to cooperate to furnish emergency management services.

By signing this Agreement, a Municipality agrees to join and be a Member of WisWARN, and to comply with the understandings, commitments, terms, and conditions for providing and receiving emergency management aid and assistance as set forth in this Agreement.

ARTICLE I DEFINITIONS

1.1 Agreement means this WisWARN Mutual Aid and Assistance Agreement.

1.2 Authorized Official means an employee, officer, or designee of a Member that is authorized to request assistance; offer assistance; refuse to offer assistance or withdraw assistance under this Agreement.

1.3 Effective Date means the date established in accordance with Section 10.1.

1.4 Emergency means any occurrence that is, or could reasonably be beyond the capability of the services, personnel, equipment, and facilities of a Member to fully manage and mitigate internally. An emergency need not be declared pursuant to Chapter 166, Wis. Stats., to be an Emergency under this Agreement.

1.5 Member means any Municipality that signs this Agreement.

1.6 Municipality means the state or any department or agency thereof, or any city, village, town, county, sanitary district, metropolitan sewage district, sewer utility district, water utility district, municipal electric company, or any commission created by contract under sec. 66.0301, Wis. Stats., located in the State of Wisconsin.

1.7 National Incident Management System (NIMS) means a national, standardized approach to incident management and response that sets uniform processes and procedures for emergency response operations.

1.8 Non-Responding Member means a Member that does not provide aid or assistance during a Period of Assistance under WisWARN.

1.9 Period of Assistance means 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 the Agreement apply during this period. The specified Period of Assistance may occur during response to or recovery from an Emergency.

1.10 Requesting Member means a Member who requests aid or assistance under WisWARN.

1.11 Resource List means a list developed by a Member of personnel, equipment, materials and supplies which may be available to other Members during an Emergency.

1.12 Responding Member means a Member that responds to a request for aid or assistance under WisWARN.

1.13 Steering Committee means the WisWARN Steering Committee which is responsible for administering WisWARN. The Steering Committee is not intended to be a separate legal body but rather is a committee of municipalities created by contract under § 66.0301, Wis. Stats.

1.14 WisWARN means the intrastate mutual aid and assistance program established by this Agreement.

ARTICLE II ESTABLISHMENT OF WisWARN

2.1 Establishment of WisWARN. Recognizing that disasters and emergencies may require aid or assistance in the form of personnel, equipment, materials, and supplies from outside the area of impact, the Members hereby establish an intrastate program for mutual aid and assistance to water and wastewater systems called WisWARN. The purpose of WisWARN is to provide a program through which Members coordinate response activities and share resources during emergencies.

2.2 Membership. Any Municipality with a water or wastewater system who signs this Agreement and complies with its terms shall be a Member of WisWARN. The term "Municipality" has the definition set forth in this Agreement. Each Member is entitled to one vote.

2.3 Representation. Each Municipality who signs this Agreement affirmatively represents that it has the legal authority to sign the Agreement, and that it has the capacity to sue and be sued.

**ARTICLE III
ORGANIZATION AND ADMINISTRATION OF WisWARN**

3.1 Organization of WisWARN. An initial meeting of Members shall be held within sixty (60) days after the Effective Date of this Agreement. Members shall be provided with a minimum of twenty (20) days written notice of the first meeting. At the first meeting, Members shall elect four Members to serve as a Working Committee. The Working Committee shall be charged with developing proposed Bylaws for WisWARN. The Bylaws shall, at a minimum, provide that the Steering Committee is to be elected by the Members, the elections are to be held at least once every two years, and that the Steering Committee is to consist of a minimum of eight Steering Committee members, with at least one Steering Committee member from each of the six emergency management regions designated by the State of Wisconsin Division of Emergency Management if possible. The Bylaws shall identify the decisions that may be made by a majority vote of the Steering Committee, the decisions that may be made by a supermajority vote of the Steering Committee, and the decisions that require action by the Members. The Bylaws may also include provisions for designation and oversight of a fiscal agent to receive money and make disbursements under WisWARN. A copy of the proposed Bylaws shall be prepared and provided to all Members no later than six months after the first meeting. A meeting of the full membership shall be held to vote on the Bylaws. Written notice of the meeting shall be provided no later than twenty (20) days prior to the meeting. After approval of the Bylaws, the Steering Committee shall be elected in accordance with the Bylaws.

3.2 Administration by Steering Committee. After a Steering Committee is elected, WisWARN shall be administered by the Steering Committee. The Steering Committee is responsible for preparing and coordinating emergency planning and response activities for WisWARN consistent with this Agreement. The Steering Committee shall meet at least annually to address WisWARN issues and to review and update emergency preparedness and response procedures and protocols. The Steering Committee shall coordinate its work with the State of Wisconsin's emergency management and public health system.

3.3 Maintenance of List of Members. The Steering Committee shall maintain a master list of all Members and the emergency management regions designated by the State of Wisconsin Division of Emergency Management in which they are located.

3.4 Resource List. The Steering Committee shall develop recommendations on the format, information, and input standards for a Member's Resource List. The intent is that the Resource List will identify the personnel, equipment, materials and supplies which may be available from a Member during an Emergency.

3.5 Maintenance of Website. The Steering Committee shall establish and maintain a website which may be accessed by Members. The website shall include the Resource List developed by each Member which identifies the personnel, equipment, materials and supplies which may be available from a Member during an Emergency.

**ARTICLE IV
MEMBER RESPONSIBILITY**

4.1 Authorized Official and Contact Information. Members shall identify an Authorized Official and alternates, and provide contact information including 24-hour access information. Members shall update the information regularly or when changes occur.

4.2 Number of Responders. A Member may designate itself as one singular responding entity or it may identify its water and wastewater systems separately as responding entities. If multiple responding entities are identified, contact information shall be provided for each responding entity. Such designation does not affect a Member's status as a single municipality/ Responding Member under this Agreement.

4.3 Resource List. A Member shall develop a Resource List consistent with the recommendations of the Steering Committee which identifies the personnel, equipment, materials and supplies which may be available from a Member during an Emergency. The Member is responsible to keep its Resource List current and up to date.

ARTICLE V REQUESTS FOR ASSISTANCE

5.1 Member Request. In the event of an Emergency, a Member's Authorized Official may request mutual aid and assistance for its water and wastewater system from another Member. Requests for assistance may 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 other Member. Specific protocols for requesting aid shall be developed by the Steering Committee and be available through the WisWARN Website.

5.2 Response to a Request for Assistance. Members are not obligated to respond to a request for assistance. However, after a Member receives a request for assistance, the Authorized Official shall evaluate whether or not to respond, whether resources are available to respond, or if other circumstances would hinder response. Following the evaluation, the Authorized Official 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 should inform the Requesting Member about the type of available resources and the approximate arrival time of such assistance.

5.3 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. The decision of a Member's Authorized Official on the availability of resources shall be final.

ARTICLE VI RESPONDING MEMBER PERSONNEL

6.1 National Incident Management System. When providing assistance under this Agreement, the Requesting Member and Responding Member shall be organized and shall function under the NIMS.

6.2 Personnel. During the Period of Assistance, employees of a Member remain employees of that Member. Personnel sent by a Responding Member shall remain under the direct supervision of the Responding Member. The Requesting Member's Authorized Official shall have operational control of the overall Emergency response and shall coordinate response activities with the designated supervisor(s) of the Responding Member(s) in accordance with NIMS. The Responding Member's designated supervisor(s) must keep accurate records of work performed by personnel during the specified Period of Assistance.

6.3 Food and Shelter. Responding Member's personnel must be self sufficient for up to 72 hours. When practical, the Requesting Member shall assist in supplying reasonable food and shelter for Responding Member personnel. If the Requesting Member is unable to provide food and shelter for Responding Member's personnel, the Responding Member's designated supervisor is authorized to secure the resources necessary to meet the needs of its personnel. Except as provided in the following sentence, the cost for such resources must not exceed the State per diem rates for that area. To the extent food and shelter costs exceed the State per diem rates for the area, the Responding Member must demonstrate that the additional costs were reasonable and necessary under the circumstances. Reasonable and necessary costs associated with providing food and shelter, if such resources are not provided, shall be reimbursed in accordance with Article VII.

6.4 Communication. The Requesting Member shall provide Responding Member personnel with radio equipment as available, or radio frequency information to program existing radios in order to facilitate communications with other responders and the Requesting Member's personnel.

6.5 Status. To the extent provided by law, whenever the Responding Member's employees are rendering aid and assistance pursuant to this Agreement, such employees shall retain the same powers, duties, immunities, and privileges they would ordinarily possess if performing their duties within the geographical limits of the Responding Member.

6.6 Licenses and Permits. To the extent permitted by law, Responding Member personnel that 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 specified Period of Assistance.

6.7 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 at 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 COSTS OF RESPONSE AND COST REIMBURSEMENT

7.1 Cost Reimbursement to Responding Member. Unless otherwise mutually agreed in whole or in part, the Requesting Member shall reimburse the Responding Member for the categories of costs listed in Sections 7.2 to 7.4 incurred during the specified Period of Assistance. The Responding Member shall track, record and submit its costs incurred during the specified Period of Assistance as provided in Sections 7.2 to 7.4. Failure to accurately track and record costs using the indicated categories may hamper the Responding Member's ability to qualify for or receive state, federal or third party disaster funding should such funding become available. If a Responding Member agrees to not seek cost reimbursement from a Requesting Member, the Responding Member need not track and record its costs as provided in Sections 7.2 to 7.4.

7.2 Personnel Costs. The Responding Member's designated supervisor(s) must keep accurate records of work performed by personnel during the specified Period of Assistance. Responding Member's personnel costs shall be calculated according to the terms provided in Responding Member's employment contracts or other conditions of employment for work.

Reimbursement requests may include all personnel costs, including salaries or hourly wages, contributions for fringe benefits, and indirect costs.

7.3 Equipment and Equipment Costs. Responding Member's costs for equipment used during the specified Period of Assistance shall include, but not be limited to, reasonable rental rates, all fuel, lubrication, maintenance, transportation, and loading and/or unloading of loaned equipment. Rates for equipment use shall be based on the Federal Emergency Management Agency's (FEMA) Schedule of Equipment Rates unless the Members agree, in writing, to different rates prior to the Responding Member supplying the equipment. Reimbursement for equipment not referenced on the FEMA 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, Responding Member may claim reimbursement from Requesting Member for such rental costs. All equipment shall be returned to the Responding Member in good working order as soon as is practicable and reasonable under the circumstances.

7.4 Costs for Materials and Supplies. Responding Member's cost for expendable or non-returnable materials and supplies shall be based on in kind or actual replacement costs, plus handling charges. 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 may be treated as expendable supplies for purposes of cost reimbursement.

7.5 Payment Period for Cost Reimbursement. In order to receive cost reimbursement, 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 Responding Member must send the itemized bill not later than ninety (90) 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.

7.6 Records. Each Requesting Member and their duly Authorized Officials 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 RISK ALLOCATION

8.1 Immunity. All Members are governmental entities entitled to governmental immunities under law, including but not limited to Section 893.80, Wis. Stats. Nothing contained herein shall waive the rights and defenses to which each Member may be entitled under law, including but not limited to all of the immunities, limitations, and defenses under Section 893.80, Wis. Stats.(2005-2006), or any subsequent amendments thereof.

8.2 Member Responsible for Own Actions. Each Member shall bear the risk of its own actions, as it does with its day-to-day operations.

8.3 Employee Claims. The employees of a Responding or Requesting Member shall be covered by his or her employing Member for purposes of worker's compensation, unemployment insurance, and benefits under ch. 40 Wisconsin statutes regardless of whether their Member employer is a Responding or Requesting Member.

8.4 Insurance. Members shall maintain insurance policies or maintain self insurance programs that cover activities that it may undertake by virtue of membership in WisWARN.

8.5 Survival of Obligations. The obligations set forth in this Article VIII shall survive the termination or expiration of this Agreement.

ARTICLE IX DISPUTES

9.1 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 the Agreement, the disputing Members shall attempt to resolve the dispute by negotiation.

ARTICLE X EFFECTIVE DATE; MODIFICATION; TERMINATION

10.1 Effective Date for Establishing WisWARN. In order to be effective, four (4) Municipalities must sign this Agreement to join WisWARN. The Effective Date for establishing WisWARN shall be the date on which the fourth Municipality signs the Agreement to join WisWARN.

10.2 New Members. Municipalities may join WisWARN by signing this Agreement. After the Effective Date established by Section 10.1, a Municipality shall become a WisWARN Member upon signing the Agreement.

10.3 Termination of Member. A Municipality's membership in WisWARN shall be terminated, in accordance with procedures established by the Steering Committee, if the Municipality fails to meet the Member's Responsibilities under Article IV.

10.4 Withdrawal of Member. A Member may withdraw from this Agreement by providing written notice of its intent to withdraw to the Steering Committee. Withdrawal takes effect 60 days after the Steering Committee receives the notice.

10.5 Effect of Termination or Withdrawal of Member. A Member's termination or withdrawal from this Agreement shall not affect in any way any liabilities or obligations incurred under the terms of this Agreement, including but not limited to a Member's duty to reimburse a Responding Member for costs incurred during a Period of Assistance. A Member's termination or withdrawal shall not affect the continuing existence of this Agreement among the remaining Members.

10.6 Modification of Agreement. No provision of this Agreement may be modified, altered or rescinded by individual Members to the Agreement. The process for modifying the Agreement shall be established in the Bylaws, and at a minimum shall require a two-thirds (2/3) majority vote of Members. Approved modifications take effect thirty days after the vote of the Members.

10.7 Termination of WisWARN. WisWARN shall continue in effect as long as there are at least four Members. In the event there are fewer than four Members, WisWARN shall terminate. The process for handling the termination of WisWARN shall be established in the Bylaws.

ARTICLE XI MISCELLANEOUS

11.1 Prior Agreements. If a Member requests or provides assistance for a water or wastewater system under WisWARN for a Period of Assistance, the terms of this Agreement shall supersede all prior agreements between the Requesting Member and the Responding Member related to the request or provision of assistance for water or wastewater systems to the extent that such prior agreements are inconsistent with this Agreement.

11.2 Severability. The Members 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 Members shall be construed and enforced as if the Agreement did not contain the invalid term or provision.

11.3 Waiver. Failure to enforce strictly the terms of this Agreement on one or more occasions shall not be deemed a waiver of the right to enforce strictly the terms of this Agreement on any other occasion.

11.4 Headings. The headings of various articles and sections of this Agreement have been inserted for convenient reference only and shall not be construed as modifying, amending, or affecting in any way the express terms and provisions of this Agreement or their interpretation.

11.5 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 without effect.

11.6 No Joint Venture. This Agreement does not establish or evidence a joint venture or partnership between the parties.

11.7 Execution of Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto were upon the same instrument.

SIGNATURE PAGE

In consideration of the covenants and obligations set forth in this Agreement, the Municipality listed below manifests its intent to be a Member of WisWARN, and agrees to comply with the understandings, commitments, terms, and conditions set forth in this Agreement, by executing this Agreement on this _____ day of _____ 20____.

NAME OF MUNICIPALITY

By: _____

Witness: _____

Title: _____

Title: _____

Please Print Name

Please Print Name

Approved as to form and legality

By: _____
Attorney of Member

Please Print Name

Appendix A
Emergency Contact Information for Member Responders

MUNICIPALITY SERVED:

The (City, Village, Town, County, Commission, District, etc.) of _____
_____, located in the County(s) of _____

State number of responding entities that will be listed with this Municipality: _____

Date Emergency Contact Information Provided: _____

Name of Member's Voting Representative _____

First Responding Entity: _____

Primary Contact
Authorized Official/Title: _____

Email Address: _____

Mailing Address: _____

City/State/Zip: _____

Office Phone: _____ Fax: _____

Emergency/After Hours Phone: _____

Secondary Contact
Name/Title: _____

Email Address: _____

Mailing Address: _____

City/State/Zip: _____

Office Phone: _____ Fax: _____

Emergency/After Hours Phone: _____

Second Responding Entity: _____

Primary Contact

Authorized

Official/Title: _____

Email Address: _____

Mailing Address: _____

City/State/Zip: _____

Office Phone: _____ Fax: _____

Emergency/After Hours Phone: _____

Secondary Contact

Name/Title: _____

Email Address: _____

Mailing Address: _____

City/State/Zip: _____

Office Phone: _____ Fax: _____

Emergency/After Hours Phone: _____

List additional Responding Entities as needed with the requested contact information.