



City of Grand Island

Tuesday, May 27, 2008

Council Session

Item G7

**#2008-140 - Approving Nebraska Water Agency Response
Network (WARN) Agreement**

Staff Contact: Gary R. Mader; Steve Riehle; Wesley Nespor

Council Agenda Memo

From: Gary R. Mader, Utilities Director
Steve Riehle, Public Works Director
Wesley Nespor, Asst. City Attorney/Purchasing

Meeting: May 27, 2008

Subject: Nebraska Water Agency Response Network (WARN)

Item #'s: G-7

Presenter(s): Robert H. Smith, Asst. Utilities Director

Background

Nebraska WARN stands for the Nebraska Water Agency Response Network. The purpose is to provide a method for water, wastewater, and storm water utilities to obtain emergency assistance from other cities and agencies. That assistance could be personnel, equipment, materials, or other services that may be needed. A copy of the proposed WARN Agreement is attached. It provides the procedures for payment, supervision, insurance, and indemnification responsibilities of both the assisting utility and the damaged utility.

The cities and utilities who become members of WARN will create a data base of materials commonly used on their system, vehicles, equipment, and the expertise and abilities of employees. This information will then be made available to other WARN members on a password protected computer system.

Should a utility become damaged and need assistance, the damaged utility would request WARN member assistance. The participating utility is under no obligation to provide assistance.

There is no cost to participate in WARN.

Discussion

The organization in Nebraska is just beginning. The current location of records is the League of Municipalities, Utilities Section office. A steering committee is working on the initial development of the WARN program. The committee includes representatives from

the American Water Works Association, Nebraska Rural Water Association, Water Environment Foundation, League of Nebraska Utilities, Nebraska Department of Health and Human Services, Nebraska Department of Environmental Quality, Midwest Assistance Program, Nebraska Emergency Management Agency, and eight municipal utilities including Grand Island.

Grand Island has been the beneficiary of mutual aid and has also been the assisting utility when others have had emergencies. A recent example of receiving assistance would be the use of high volume water pumps from other utilities during the recent valve failure at the Waste Water Treat Plant.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the Nebraska WARN Agreement.

Sample Motion

Move to approve the Nebraska WARN Agreement.

Utilities Helping Utilities Workshop Fact Sheet

1. **What is Mutual Aid/Assistance?**
 - Mutual Aid/Assistance is one utility helping another based on a written agreement
 - The assistance is provided across jurisdictional boundaries in the event of an emergency
2. **What is a WARN?**
 - A Water and Wastewater Agency Response Network (WARN) is a network of utilities helping utilities to respond to and recover from emergencies
 - Participation is voluntary
 - There is no obligation to respond
 - There is no cost to participate
3. **What is the purpose of a WARN?**
 - A WARN establishes an agreement and protocols for sharing resources among water and wastewater utilities statewide
 - A WARN provides a forum for establishing and maintaining emergency contacts
 - A WARN provides access to specialized resources needed to respond to emergencies that disrupt water and/or wastewater systems
 - A WARN can facilitate training that specifically focuses on the exchange of resources during an emergency or drill
4. **Why is a WARN important?**
 - Utility resources are specialized
 - Utilities must be self-sufficient
 - Utilities must fill the gap before the arrival of government aid
5. **What does a WARN program provide a utility?**
 - Access to specialized, certified, and knowledgeable utility personnel
 - Access to heavy equipment, tools and supplies used by utilities during normal events
6. **What are the benefits of a WARN?**
 - There is no cost to participate
 - WARN is like investing in a no cost insurance policy to access resources when needed
 - WARN increases emergency preparedness and coordination
 - WARN enhances access to specialized resources
 - WARN provides a single agreement to access resources statewide
 - WARN expedites arrival of aid (don't have to work out the administrative items; the agreements and WARN protocols work them out in advance for you)
 - WARN agreement contains indemnification and worker's compensation provisions to protect participating utilities and provide reimbursement protocols
7. **How does a utility get assistance during an emergency?**
 - Currently, each WARN system works differently depending on previous agreements
 - Initial access may be made directly to other members or through an identified coordination point
 - As a result of the contact, WARN members are able to match the equipment, skilled labor, and other resources needed with resources other members have available by querying a database, calling members, or using an internet message board to locate those resources
 - Each WARN also provides facilitation in collecting damage assessment and locating resources as needed
 - Public utilities may also access other resources through local, state, and federal agencies
8. **Are member utilities required to respond and send resources?**
 - There is no obligation to respond

9. What happens if a utility sends resources and needs them back?

- Under no circumstances is a utility to send resources if it impacts their ability to manage daily operations or response to its own emergency
- It is up to the lending utility to determine what resources to send
- Resources remain under the authority of the sending utility, and as such can be recalled any time

10. What happens if equipment on loan is damaged or stolen?

- This may depend on your state's mutual aid/assistance agreement; the lending utility is typically responsible to have insurance in case this happens

11. Are mutual aid and assistance activities eligible for FEMA reimbursement?

- It is important to understand how the FEMA programs work and understand how they apply to mutual aid/assistance in advance; Some key considerations for FEMA reimbursement include:
 - The assistance is requested by the Applicant
 - The work performed is directly related to the disaster and is otherwise eligible for FEMA assistance
 - The entity can provide documentation of rates and payment for services, if requested
 - The agreement is written and was in effect **prior** to the disaster

12. Will a utility be reimbursed for the use of their resources?

- This depends upon the terms that the lending and borrowing utilities agree upon
- In some cases during a federally declared disaster, FEMA may provide reimbursement for equipment, fuel, and personnel used in a disaster

13. How is WARN different from a statewide mutual aid program?

- Statewide mutual aid/assistance agreements (MAA) frequently require a declaration of a "local emergency" to activate the agreement, WARN agreements do not require the declaration of an emergency, saving critical time in response
- Statewide MAA programs do not typically include private utilities, WARN agreements do
- For aid to cross state lines coordination with state emergency management is recommended and is typically facilitated by Emergency Management Assistance Compact (EMAC) in coordination with the National Response Plan

14. Is help available for disasters other than hurricanes?

- WARN is available in all types of emergencies
- WARN members can receive assistance anytime their system needs emergency assistance

15. Who should be involved in helping develop a WARN?

- Utility owner/operators
- Professional association representation
- State water and wastewater primacy agency (State health, environmental protection, etc.)
- State emergency management and/or homeland security agency
- US EPA region representation

16. What help is available to form a WARN?

- AWWA report – Utilities Helping Utilities: An Action Plan For Mutual Aid and Assistance Networks for Water and Wastewater Utilities
- AWWA will be holding workshops across the country
- EPA can help with post workshop remote support on a case-by-case basis, depending on available funding and the specific needs of the program. Support could include facilitation of meetings and workshops, administrative support, and answer technical questions.

17. What about setting up an interstate mutual aid program?

- Currently the Emergency Management Assistance Compact (EMAC) is being used by all fifty states to share aid across state lines. The water sector will be working with the administrators of EMAC to ensure that it can be used effectively for the water sector.

NEBRASKA WARN WATER AND WASTEWATER AND STORMWATER MUTUAL AID AGREEMENT

PURPOSE

The Water and Wastewater and Stormwater Mutual Aid Program is hereby established to provide a method whereby water, wastewater, and stormwater departments sustaining physical damage from natural or man made disasters can obtain emergency assistance, in the form of personnel, equipment, and materials and other associated services necessary, from other water, wastewater, and stormwater departments. The purpose of this Agreement is to formally document such program. The title of this agreement shall be the Nebraska WARN.

PARTIES

This Mutual Aid Agreement ("Agreement") is entered into by the City of Grand Island, that by the signatures on duplicate original copies of this Agreement has consented to the terms of this Agreement. Any utility that has signed this Agreement and submitted a copy to the location designated by the Nebraska WARN Governance Board is a party to this Agreement. Eligible participants shall be limited to any political subdivision of the State of Nebraska that owns and/or operates a water, wastewater and/or stormwater system.

PROCEDURE

- In the event that a particular utility becomes a damaged utility, the following procedure shall be followed to the best extent possible:
- The damaged utility may contact the authorized representative of one or more of the Participating Utilities and provide them with the following information:
 - A general description of the damage sustained;
 - The part of the water/wastewater/stormwater system for which assistance is needed;
 - The amount and type of personnel, equipment, materials and supplies needed and a reasonable length of time they will be needed;
 - The present weather conditions and the forecast for the next twenty-four hours; and
 - A specific time and place for a representative of the damaged utility to meet the personnel and equipment of the assisting utility; and
 - The identification of work conditions and special constraints such as availability of fuel supplies, lodging/meal support, medical facilities, security, communications, etc.

- When contacted by a damaged utility, the authorized representative of a participating utility shall assess his utility's situation to determine whether it is capable of providing assistance. No participating utility shall be under any obligation to provide assistance to a damaged utility. If the authorized representative determines that the assisting utility is capable of and willing to provide assistance, the assisting utility shall so notify the authorized representative of the damaged utility and providing the following information to the best extent possible:
 - A complete description of the personnel, equipment and materials to be furnished to the damaged utility;
 - The estimated length of time the personnel, equipment and materials will be available;
 - The work experience and ability of the personnel and the capability of the equipment to be furnished;
 - The name of the person or persons to be designated as supervisory personnel; and
 - The estimated time when the assistance provided will arrive at the location designated by the authorized representative of the damaged utility.
- The personnel and equipment of the assisting utility shall remain, at all times, under the direct supervision and control of the designated supervisory personnel of the assisting utility. In instances where only equipment is provided by the assisting utility, the ownership of said equipment shall remain with the assisting utility and said equipment shall be returned to the assisting utility immediately upon request. Representatives of the damaged utility shall suggest work assignments and schedules for the personnel of the assisting utility; however, the designated supervisory personnel of the assisting utility shall have the exclusive responsibility and authority for assigning work and establishing work schedules for the personnel of the assisting utility. The designated supervisory personnel shall maintain daily personnel time records and a log of equipment hours, be responsible for the operation and maintenance of the equipment furnished by the assisting utility, and report work progress to the damaged utility.
- Unless otherwise agreed to, the damaged utility must provide food and housing for the personnel of the assisting utility from the time of departure from their regularly scheduled work location until the time of return to their regularly scheduled work location. The food and shelter provided shall be subject to the approval by the assisting utility's supervisory personnel. If not approved, food and shelter must be provided and paid for as determined by mutual agreement.
- The damaged utility must provide communications between the personnel of the assisting utility and the damaged utility.
- When providing assistance under this Agreement, the damaged utility and assisting utility shall be organized and shall function under the National Incident Management System.

REIMBURSABLE EXPENSES

To the best extent possible, the terms and conditions governing reimbursement for any assistance provided under this Agreement shall be agreed to prior to the providing of such assistance and shall be in accordance with the following provisions:

- **PERSONNEL** – During the period of assistance, the assisting utility shall continue to pay its employees according to its then prevailing rules and regulations. The damaged utility shall reimburse the assisting utility for all direct and indirect payroll costs and expenses incurred during the period of assistance, including, but not limited to, employee pensions and benefits.
- **EQUIPMENT** – The assisting utility shall be reimbursed for the use of its equipment during the Period of Assistance according to the Schedule of Equipment Rates established and published by FEMA. If an assisting utility uses an alternate basis of rates for equipment listed on the FEMA Schedule of equipment rates, it shall provide such rates to the damaged utility prior to providing assistance. Rates for equipment not referenced on the FEMA Schedule of Equipment Rates shall be developed based on actual recovery of costs.
- **MATERIALS AND SUPPLIES** – The assisting utility shall be reimbursed for all materials and supplies furnished by it and used or damaged during the period of assistance, unless such damage is caused by negligence of the assisting utility's personnel. The measure of reimbursement shall be the replacement cost of the materials and supplies used or damaged, plus ten percent of such cost. In the alternative, the parties may agree that the damaged utility will replace, with a like kind and quality, as determined by the assisting utility, the materials and supplies used or damaged.

PAYMENT

Unless mutually agreed otherwise, the assisting utility shall bill the requesting utility for all expenses not later than 45 days following the period of assistance. Unless mutually agreed otherwise, the requesting utility shall pay the bill in full no later than 90 days following the billing date.

INSURANCE

Each participating utility 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.

INDEMNIFICATION

The utility requesting assistance shall indemnify, defend and hold harmless any assisting utility against any and all claims, demands and damages or expenses, including attorneys fees, arising out of or resulting from the performance of the contract that results in bodily injury, sickness, disease, death, or injury to or destruction of tangible property, including the loss of use resulting therefrom and is caused in whole or in part by the assisting utility or anyone for whose acts any of them may be liable. However, this provision will not require the requesting utility to indemnify or hold harmless the assisting utility for any losses, claims, damages, and expenses arising out of or resulting from the gross negligence of the assisting utility.

GOVERNANCE AND VOTING

The Nebraska WARN shall be governed by a Board of up to 11 persons selected by the participating utilities. One time in a 12 month period, the Board shall send a Board nomination form to all Nebraska WARN participating utilities. Following the submission of nominations, the Board shall send a ballot of Board candidates to all Nebraska WARN participating utilities. Each participating utility shall be entitled to complete one ballot. The persons receiving the most votes on the returned ballots shall be the Nebraska WARN Board. Board members do not have to be staff or elected officials of a participating utility.

BOARD DUTIES

The Board shall have the authority to govern the general operations of the Nebraska WARN. The Board shall have the authority to appoint one or more Nebraska WARN administrators to assist in the general operations of the Nebraska WARN.

FUNDING AND PROPERTY OWNERSHIP

The Nebraska WARN shall not collect dues, taxes or any type of revenue from the participating utilities. The Nebraska WARN shall not own property.

TERM AND DURATION

This Agreement shall become effective as to each party on the date such party executes the Agreement and shall continue in force and remain binding until said party terminates the agreement. Termination of participation in this Agreement by a party shall not affect the continued operation of this Agreement between and among the remaining parties. This agreement shall remain effective until January 31, 2058.

TERMINATION

Any Party may at any time by written resolution or notice given to the administrator to decline to participate in the provision of mutual aid. The party shall give written notice of termination of participation in this Agreement.

NOW, THEREFORE, in consideration of the covenants and obligations contained herein, the Participating Utility listed here, as a Participating Utility duly executes this Water/Wastewater/Stormwater Mutual Aid Agreement this 27th day of May, 2008.

City of Grand Island, Utilities Department, Public Works Department

Margaret Hornady, Mayor

Attest: City Clerk

RESOLUTION 2008-140

WHEREAS, Nebraska Water Agency Response Network (WARN) provides a method for water, wastewater, and storm water utilities to obtain emergency assistance from other cities and agencies; and

WHEREAS, the WARN Agreement provides the procedures for payment, supervision, insurance, and indemnification responsibilities of both the assisting utility and the damaged utility; and

WHEREAS, it is in the best interests of the City to participate in this shared service; and

WHEREAS, the proposed agreement has been reviewed and approved by the City Attorney.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Agreement with the Nebraska Water Agency Response Network is hereby approved, and the Mayor is hereby authorized and directed to execute such agreement on behalf of the City of Grand Island.

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Adopted by the City Council of the City of Grand Island, Nebraska, May 27, 2008.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk