

# CITY of NOVI CITY COUNCIL

Agenda Item H  
June 15, 2009

**SUBJECT:** Approval of the Oakland County Building Officials Association Damage Assessment Mutual Aid Agreement, an inter-governmental agreement between Oakland County communities outlining the terms by which member communities will assist each other in the evaluation of buildings and structures to determine the nature and extent of damage and the cost of repairs in the event of a disaster or emergency.

**SUBMITTING DEPARTMENT:** Police and Community Development <sup>DEM</sup> *WS*

**CITY MANAGER APPROVAL:** *[Signature]*

**BACKGROUND INFORMATION:**

Damage assessment is the evaluation of buildings and structures to determine the nature and extent of damage and the cost of repairs that are the result of a disaster or emergency. It is a key component of the information required to be provided to Oakland County, the State of Michigan, and the Federal Government in order to receive State or Federal aid. This information must be provided quickly, usually within 48 hours.

The Oakland County Building Officials Association Damage Assessment Mutual Aid Agreement is an agreement between communities in Oakland County. This agreement will allow a community to receive help for Damage Assessment Services from other communities, during an emergency. The help would come from inspectors who would evaluate the nature and extent of damage to buildings and structures resulting from a disaster or emergency. Depending on the size of the disaster, a community could either be in need of help, or be providing help to another community.

While we hope there is never a need for this type of assistance, it is important for us to be prepared. This agreement will allow the City of Novi to provide or receive help in the event of an emergency. It will help the City of Novi and other communities in Oakland County to respond quickly and provide the information necessary to receive State or Federal aid.

As with other Mutual Aid Agreements, the City of Novi will need a resolution authorizing the Mayor to enter into the Oakland County Building Officials Damage Assessment Mutual Aid Agreement. Legal counsel has reviewed this matter and opines there is no legal impediment which precludes the City of Novi from executing this agreement.

**RECOMMENDED ACTION:** Approval of Oakland County Building Officials Association Damage Assessment Mutual Aid Agreement and authorization for Mayor and City Clerk to sign on behalf of the City of Novi.

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Gatt				
Council Member Burke				
Council Member Crawford				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Staudt				

June 9, 2009

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Deputy Chief Thomas Lindberg  
City of Novi Police Department  
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Novi, MI 48375

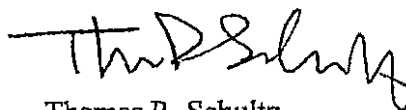
Re: Oakland County Building Officials Damage Assessment Mutual Aid  
Agreement

Dear Deputy Chief Lindberg:

Attached is the resolution authorizing the City to enter into an intergovernmental agreement with other Oakland County communities to create the Oakland County Building Officials Damage Assessment Agreement. The purpose of the agreement is to share the services of Building Officials in neighboring communities for damages assessment in the event of a disaster or emergency. Our office has reviewed the agreement on behalf of Novi and we see no impediment to entering into it. We had previously had an opportunity to make some general comments on the terms of the document, which was initially prepared by Oakland County. Those changes were incorporated into the attached draft before it was sent to Novi. The agreement is voluntary and membership can be terminated on 30 days' notice.

If you have any questions, please call me.

Very truly yours,



Thomas R. Schultz

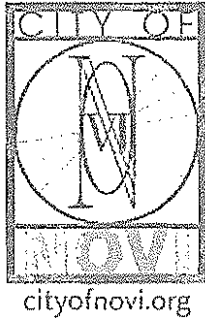
TRS/jes

Enclosure

cc: Clay Pearson, City Manager  
Pam Antil, Assistant City Manager  
Maryanne Cornelius, City Clerk  
Chief David Molloy

1249853

## MEMORANDUM



**TO:** CLAY J. PEARSON, CITY MANAGER  
**FROM:** DAVID E. MOLLOY, CHIEF OF POLICE *DEM*  
CHARLES BOULARD, BUILDING OFFICIAL  
**SUBJECT:** DAMAGE ASSESSMENT MUTUAL AID AGREEMENT  
**DATE:** MAY 20, 2009

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### **Oakland County Building Officials Association Damage Assessment Mutual Aid Agreement:**

Damage assessment is the evaluation of buildings and structures to determine the nature and extent of damage and the cost of repairs that are the result of a disaster or emergency. It is a key component of the information required to be provided to Oakland County, the State of Michigan, and the Federal Government in order to receive State or Federal aid. This information must be provided quickly, usually within 48 hours.

The Oakland County Building Officials Association Damage Assessment Mutual Aid Agreement is an agreement between communities in Oakland County. This agreement will allow a community to receive help for Damage Assessment Services from other communities, during an emergency. The help would come from inspectors who would evaluate the nature and extent of damage to buildings and structures resulting from a disaster or emergency. Depending on the size of the disaster, a community could either be in need of help, or be providing help to another community.

While we hope there is never a need for this type of assistance, it is important for us to be prepared. This agreement will allow the City of Novi to provide or receive help in the event of an emergency. It will help the City of Novi and other communities in Oakland County to respond quickly and provide the information necessary to receive State or Federal aid.

As with other Mutual Aid Agreements, the Novi City Council will need to authorize the Mayor to enter into the Oakland County Building Officials Association Damage Assessment Mutual Aid Agreement. This could be a valuable resource to our community if needed.

CITY OF NOVI

OAKLAND COUNTY, MICHIGAN

**RESOLUTION REGARDING  
DAMAGE ASSESSMENT MUTUAL AID AGREEMENT**

At a meeting of the City Council of the City of Novi, Oakland County, Michigan, held on the \_\_\_\_ day of June, 2009, at the City Hall, 45175 West Ten Mile Road, Novi, Michigan 48375.

The following resolution was offered by \_\_\_\_\_ and supported by \_\_\_\_\_.

**WHEREAS**, damage assessment is the evaluation of buildings and structures to determine the nature and extent of damage and the cost of repairs that are as a result of a disaster or emergency; and

**WHEREAS**, a key component of the information required is to be provided to Oakland County, the State of Michigan, and the federal government in order to receive state and/or federal aid; and

**WHEREAS**, this information must be provided quickly usually within 48 hours; and

**WHEREAS**, the Oakland County Building Officials Association Damage Assessment Mutual Aid Agreement is an Agreement between communities in Oakland County which Agreement allows a community to receive help for damage assessment services from other communities during an emergency; and

**WHEREAS**, the help would come from inspectors who would evaluate the nature and extent of damage to buildings and structures resulting from a disaster or emergency; and

**WHEREAS**, depending on the size of the disaster, a community could either be in need of help or be providing help to another community.

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Novi shall enter into the Oakland County Building Officials Association Damage Assessment Mutual Aid Agreement and the City Council authorizes its Mayor and Clerk to execute the Mutual Aid Agreement on behalf of the City of Novi.

AYES:

NAYS:

ABSTENTIONS:

STATE OF MICHIGAN     )  
  ) ss.  
COUNTY OF OAKLAND    )

I, MARYANNE CORNELIUS, the duly-qualified Clerk of the City of Novi, Oakland County, Michigan, do hereby certify that the foregoing is a true and complete copy of a Resolution adopted by the City Council of the City of Novi at a duly-called meeting held on the \_\_\_\_ day of March, 2009, the original of which is on file in my office.

IN WITNESS WHEREOF, I have hereunto affixed my official signature this \_\_\_\_ day of June, 2009.

\_\_\_\_\_  
MARYANNE CORNELIUS  
Clerk, City of Novi

1245280

**INTERLOCAL AGREEMENT**

Effective: January 1, 2009

BETWEEN

**PARTICIPATING POLITICAL SUBDIVISIONS AS SIGNATORIES TO  
THIS INTERLOCAL AGREEMENT**

CREATING THE

**OAKLAND COUNTY BUILDING OFFICIALS ASSOCIATION DAMAGE  
ASSESSMENT MUTUAL AID AGREEMENT**

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**THIS INTERLOCAL AGREEMENT** (the "Agreement") is entered into by and between [insert city names], referred to in this Agreement individually as a "Party" and collectively as "Parties".

RECITALS:

WHEREAS, Damage Assessment Services can be improved by cooperation between political subdivisions during times of public emergency or disaster ("Incidents");

WHEREAS, the Michigan Constitution of 1963, Article 7. § 28, and the Urban Cooperation Act of 1967, Act No. 7 of the Public Acts of 1967, Ex. Sess., being MCL 124.501 et seq. (the "Act"), permit a political subdivision to exercise jointly with any other political subdivision any power, privilege or authority which such political subdivisions share in common and which each might exercise separately;

WHEREAS, the Parties desire to enter into an interlocal agreement, pursuant to the Act, to further improve Damage Assessment Services;

WHEREAS, each Party has the authority to execute this Agreement pursuant to resolution of its governing body; and

WHEREAS, each Party desires to commit personnel and equipment to another Party upon the request of another Party;

WHEREAS, the Michigan Constitution and the people of the State of Michigan have long recognized the value of cooperation by and among the state and its political subdivisions;

**NOW, THEREFORE**, in consideration of the mutual covenants, undertakings, understandings and agreements set forth in this Agreement, it is hereby agreed as follows:

**ARTICLE I  
DEFINITIONS AND EXHIBITS**

Section 1.01. Definitions. The following words and expressions, as used in this Agreement, whenever initially capitalized, whether used in the singular or plural, possessive or non-possessive, either within or without quotation marks, shall be defined and interpreted as follows:

- (a) "Agreement" means this Agreement creating the Oakland County Building Officials Association Agreement;
- (b) "Association Board" means the Board of the Oakland County Building Officials Association
- (c) "Bylaws" means such rules and procedures for the operation of the Association as established by the Association Board and as may from time to time be amended.
- (d) "Days" means calendar days.
- (e) "Building Official" means the person responsible for building code enforcement or a director of the building department.
- (f) "Building Department" means the operating department of a Party providing Damage Assessment Services.
- (g) "Building Inspector" means personnel qualified and trained in providing Damage Assessment Services.
- (h) "Damage Assessment Services" means the systematic process of using qualified personnel to evaluate the nature and extent of damage to buildings and structures resulting from a disaster or emergency.
- (i) "Effective Date" means the date on which the Agreement is first filed with the Secretary of State, the Oakland County Clerk, and each county where parties are located.
- (j) "Incident" means a public emergency, conflagration, serious threat to public safety or disaster.
- (k) "Oakland County Office of Emergency Response and Preparedness" means the Oakland County office(s), official(s) or administrator(s) responsible for the activation and implementation of the Emergency Operations Plan for Oakland County and/or the coordination of responses to emergencies arising in the county.

- (l) "Party" means a political subdivision. For purposes of Article II, the term "Party" means a political subdivision including, but not limited to, elected and appointed officials, board members, building department and public safety personnel, volunteers, employees, agents, sub-contractors and other related staff, which has entered into this Agreement.
- (m) "State" means the State of Michigan.

**ARTICLE II  
RESERVATION OF RIGHTS, INSURANCE AND  
LIABILITY ASSURANCES**

Section 2.01. No Waiver of Governmental Immunity. All of the privileges and immunities from liability, and exemptions from laws, ordinances and rules, and all pensions, relief, disability, worker's compensation and other benefits which apply to the activity of Parties and the officers, agency, or employees of any public agency when performing their respective functions within the territorial limits for their respective agencies shall apply to the same degree and extent to the performance of such functions and duties of such Parties, officers, agents or employees extraterritorially under the provision of this Agreement. No provision of this Agreement is intended, nor shall any provision of this Agreement be construed, as a waiver by any Party of any governmental immunity as provided by Section 9 of the Act or otherwise under law.

Section 2.02. Independent Contractor. The Parties agree that at all times and for all purposes under the terms of this Agreement each Party's relationship to any other Party shall be that of an independent contractor. No liability, right or benefit arising out of any employer/employee relationship, either express or implied, shall arise or accrue to any Party as a result of this Agreement. Personnel dispatched to aid a Party are entitled to receive benefits and/or compensation to which they are otherwise entitled under the Michigan Workers' Disability Compensation Act of 1969, any pension law, or any act of Congress.

Section 2.03. Liability. Each Party will be solely responsible for the acts of its own employees, agents, and subcontractors, the costs associated with those acts and the defense of those acts. The Parties shall not be responsible for any liability or costs associated with those acts and the defense of those acts for Parties outside of their political jurisdictions. It is agreed that none of the Parties shall be liable for failure to respond for any reason to any request for Damage Assessment Services or for leaving the scene of an Incident after responding to a request for service.

Section 2.04. Insurance. Each Party shall be responsible for insuring its activities as they relate to this Agreement.



**ARTICLE III  
DURATION, WITHDRAWAL, AND TERMINATION OF  
INTERLOCAL AGREEMENT**

Section 3.01. Duration. The existence of the Agreement commences on the Effective Date and continues until terminated in accordance with Section 3.03.

Section 3.02. Withdrawal by a Party. Any Party may withdraw, at any time, from this Agreement for any reason, or for no reason at all, upon thirty (30) days written notice to the Association. The withdrawal of any Party shall not terminate or have any effect upon the provisions of this Agreement so long as at least two (2) Parties are committed to this Agreement. Parties withdrawing from the Association and subsequently requesting a mutual aid resource from an Association member may be subject to reasonable fees for that resource according to the fee schedule established, and periodically reviewed and updated, by the Association Board.

Section 3.03. Termination. This Agreement shall continue until terminated by the first to occur of the following;

- (a) The Agreement consists of less than two (2) Parties; or
- (b) A unanimous vote of termination by the total membership of the Association Board

**ARTICLE IV  
DAMAGE ASSESSMENT SERVICES**

Section 4.01. Requests for Damage Assessment Services. The Building Official, or other official designated by a party, or a designated representative from the Oakland County Office of Emergency Response and Preparedness, shall have the right to initiate requests for Damage Assessment Services at such times as deemed to be in the best interests of the Party to do so. Nothing within this agreement shall prohibit a Party from activating existing mutual aid agreements.

Section 4.02. Response to Request for Services. Upon a Building Official's receipt of a request from another Party for Damage Assessment Services, the Building Official or his/her designee, may commit the requested personnel to the requesting Party. A Party shall provide Damage Assessment Services to any other Party upon request provided that the assisting Party shall have the right to maintain the operational capability of their own jurisdiction. An authorized representative of the Party which has withheld or refused to provide requested assistance under this Agreement shall immediately notify the requesting Party, and shall submit an explanation for the refusal to the Association Board upon request from the Association Board. A Party responding to a request for Damage Assessment Services shall not be required to maintain personnel within the boundaries of the requesting Party for a period longer than is necessary or until such time the assisting Party needs its resources to maintain the operational capacity of its own jurisdiction. Additional response guidelines may be established by the Association Board or by the Bylaws.

Section 4.03. Dispute Resolution and Recourse Regarding Mutual Aid Requests. In the interest of fostering a fair and sustainable mutual aid arrangement between the Parties, the following methods of dispute resolution shall be available to the Parties:

- (a) If a Party believes its resources have been requested by another Party on multiple occasions in abuse of the intent of this Agreement, or if a Party believes the refusal of another party to respond to a request for assistance was unreasonable, it may file a complaint with the Association Board for resolution under subsection (b), below.
- (b) Without waiving the rights, powers, privileges and authority of individual jurisdictions to address issues at the direction and discretion of their governing body, upon receipt of a complaint under (a) above, the Association Board, shall appoint a panel of three (3) Association Board members to investigate the complaint and recommend a resolution, and the Association Board shall thereafter determine the resolution of the complaint. For purposes of considering such complaints, the Association representatives of the complaining Party and the Party that is the subject of the complaint, shall not participate in and shall abstain from any vote concerning the complaint, but shall be given an opportunity to submit statements and information to the Association Board for its consideration. The determination of the Association Board shall not be at the same meeting at which the panel's recommendation concerning the complaint is first discussed. An unreasonable refusal of service or an abuse of the intent of this Agreement may constitute grounds for suspension or removal from participation in this Agreement, as determined by the Association Board. . Such suspension or removal of a Party from participation shall be the sole and exclusive remedy for an unreasonable refusal of service or an abuse of the intent of this Agreement, and the Subject Party shall not incur any liability for damages or costs for such unreasonable refusal of service or abuse of intent.

Section 4.04. Obligations to Non-Parties. This Agreement shall not release any party from any agreements such Party may have with any individual or legal entity relating to Damage Assessment Services who is not a Party to this Agreement. This Agreement shall not preclude, supersede or negate the activation or the fulfillment of the terms of any local, regional or state mutual aid or reciprocal aid compacts or agreements.

**ARTICLE V  
ADMISSION AND REMOVAL OF PARTIES**

Section 5.01. Admission. A political subdivision may become a Party upon signing this Agreement and approval of two-thirds of the total Association Board.

Section 5.02. Removal. A Party may be removed from participation in this Agreement upon a vote of two-thirds of the Association Board.

Section 5.03. Active Members. The Board shall maintain a current list of Parties, to include any new Party as approved by the Board.

**ARTICLE VI  
FINANCES**

Section 6.01. Dues, Fees and Assessments. The Association Board shall determine any dues, fees and assessments to each Party, the amount of which and payment procedure shall be set forth in the Bylaws. Approval of an assessment shall require an affirmative vote of two-thirds of the total membership as of the date of the vote, and such an approval shall not be effective until sixty (60) days after the date of Board approval, unless a longer period of time is designated in the motion.

**ARTICLE VII  
MISCELLANEOUS**

Section 7.01. Entire Agreement. This Agreement sets forth the entire agreement between the Parties. The language of this Agreement shall be construed as a whole according to its fair meaning and not construed strictly for or against any Party. The Parties have taken all actions and secured all approvals necessary to authorize and complete this Agreement.

Section 7.02. Severability of Provisions. If a Court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, then that provision shall be deemed severed from this Agreement. The remainder of this Agreement shall remain in full force.

Section 7.03. Governing Law/Consent to Jurisdiction and Venue. This Agreement is made and entered into in the State of Michigan and shall in all respects be interpreted, enforced and governed under the laws of the State of Michigan. Except as otherwise required by law or court rule, any action brought to enforce, interpret or decide any claim arising under this Agreement shall be brought in the 6<sup>th</sup> Judicial Circuit Court of the State of Michigan or the United States District Court for the Eastern District of Michigan, Southern Division as dictated by the applicable jurisdiction of the court. Except as otherwise required by law or court rule, venue is proper in the courts set forth above.

Section 7.04. Captions. The captions, headings, and titles in this Agreement are intended for the convenience of the reader and not intended to have any substantive meaning and are not to be interpreted as part of this Agreement.

Section 7.05. Terminology. All terms and words used in this Agreement, regardless of the numbers or gender in which they are used, are deemed to include any other number and any other gender as the context may require.

Section 7.06. Recitals. The Recitals shall be considered an integral part of this Agreement.

Section 7.07. Amendment. The Agreement may be amended or an alternative form of the Agreement adopted only upon written agreement and approval of the governing bodies of all Parties, except an amendment to remove a Party shall not require agreement or approval of the governing body of the Party being removed. Amendments to this Agreement shall be filed with the Secretary of State, the Oakland County Clerk and any other governmental agency, office and official required by law.

Section 7.08. Compliance with Law. The Association shall comply with all federal and State laws, rules, regulations, and orders applicable to this Agreement.

Section 7.09. No Third Party Beneficiaries. Except as expressly provided herein, this Agreement does not create, by implication or otherwise, any direct or indirect obligation, duty, promise, benefit, right of indemnification (i.e., contractual, legal, equitable, or by implication) right of subrogation as to any Party's rights in this Agreement, or any other right kind in favor of any individual or legal entity.

Section 7.10. Counterpart Signatures. This Agreement may be signed in counterpart. The counterparts taken together shall constitute one (1) Agreement.

Section 7.11. Permits and Licenses. Each Party shall be responsible for obtaining and maintaining, throughout the term of this Agreement, all licenses, permits, certificates, and governmental authorizations for its employees/and/or agents necessary to perform all its obligations under this Agreement. Upon request, a Party shall furnish copies of any permit, license, certificate or governmental authorization to the requesting party.

Section 7.12. No Implied Waiver. Absent a written waiver, no fact, failure, or delay by a party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by either Party shall subsequently affect its right to require strict performance of this Agreement.

Section 7.13. Notices. Notices given under this Agreement shall be in writing and shall be personally delivered, sent by express delivery service, certified mail, or first class U.S. mail postage prepaid to the person appointed to the governing board by the governing body of the participating agency.

**IN WITNESS WHEREOF**, this Agreement is executed by the Parties on the date hereafter set forth.

WITNESSES:

\_\_\_\_\_  
Maryanne Cornelius  
City Clerk  
\_\_\_\_\_

BY: \_\_\_\_\_  
DAVID B. LANDRY,  
City of NOVI  
ITS: MAYOR \_\_\_\_\_

DATE: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

DATE: \_\_\_\_\_