

MICHIGAN WATER/WASTERWATER AGENCY RESONSE NETWORK

2nd D R A F T

Mutual Aid and Assistance Agreement

RECITALS

WHEREAS, certain Michigan water and wastewater agencies (the “Members”), have formed the “Michigan Water/Wastewater Agency Response Network,” (Michigan WARN or MI WARN), to share resources and to assist each other in the form of personnel, equipment, materials and supplies in the event of emergencies that disrupt utility services; and

WHEREAS, the Members have agreed to enter into this “Michigan Water/Wastewater Agency Response Network Mutual Aid Agreement,” (“Agreement”), to describe the terms and conditions under which emergency assistance may be requested and provided; and

WHEREAS, by executing the Agreement, the Parties express their intent to participate in a program of Mutual Aid and Assistance within the State of Michigan.

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

AGREEMENT

This Agreement is made and entered into by public and private Water and Wastewater Utilities that have, by executing this Agreement, manifested their intent to participate in an Intrastate Program for Mutual Aid and Assistance.

Statutory Authority (cite authorizing state statute, if any) This Agreement is authorized under Section XXX of the (state revised statutes on mutual aid), which provides that Water and Wastewater Utilities may contract with each other to provide services.

Note

Water and wastewater utilities may need statutory authority to enter into agreements for Mutual Aid and Assistance. If there is no statutory authority, a legal question arises as to whether such authority is necessary for a water and wastewater Mutual Aid and Assistance agreement. Both the California and Washington Agreements reference statutory authority. The Florida and Texas Agreements do not.

ARTICLE I. PURPOSE

The Water/Wastewater Mutual Aid Program was established to provide a method whereby water/wastewater utilities sustaining physical damage from natural or man made disasters could obtain emergency assistance, in the form of personnel, equipment, and materials and other associated services necessary, from other water/wastewater utilities. This Agreement hereby establishes within the State of Michigan an Intrastate Program for Mutual Aid and Assistance. Through the Michigan WARN Program, Members shall coordinate voluntary response activities and shall share voluntary resources during emergencies and other events, as described in this Agreement.

Note on Article I

Article I briefly describes why water and wastewater utilities established a Program for Mutual Aid and Assistance and the purpose of the Agreement. Inclusion of this Article recognizes the spirit and intent of the Mutual Aid and Assistance Program.

ARTICLE II. DEFINITIONS

- A. Agreement** - The Michigan Water/Wastewater Agency Response Network Mutual Aid Agreement
- B. Authorized Official** - An employee of a Member who is authorized by the Member's governing board or management to request assistance of offer assistance under this agreement.
- C. Emergency** - A natural or manmade event that is, or is likely to be, beyond the control of the available services, personnel, equipment, and facilities of a Mutual Aid and Assistance Program Member.
- D. Member** - Any public or private water and/or wastewater utility or its principals that execute this Agreement.
- E. Requesting Member** - A Member who requests assistance in accordance with the terms and conditions of this Agreement and the Mutual Aid and Assistance Program.
- F. Responding Member** - A Member that responds to a request for assistance under the Mutual Aid and Assistance Program.
- G. National Incident Management System (MINS)** – A national, standardized approach to incident management and response created by the federal Department of Homeland Security that sets uniform processes and procedures for emergency response operations to prepare for, protect against, respond to and recover from emergency events.
- H. Period of Assistance** - A specified period of time during which a Responding Member assists a Requesting Member. The period commences when personnel, equipment, or supplies depart from a Responding Member's facility and ends when the resources are returned to 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, as previously defined.
- I. Statewide Committee** – A committee consisting of representatives from Members and other agencies that may have a role to play in the Mutual Aid and Assistance Program (e.g., AWWA Michigan Section, APWA, DEQ,

MWEA, RCAP, NRWA, WEF, public health, water and wastewater utility organizations), that shall administer the WARN program for the state.

- K. Work or Work Related Period** - Any Period of time in which either the personnel or equipment of the Responding Member are being used by the Requesting Member to provide assistance. Specifically included within such period of time are rest breaks when the personnel of the Responding Member will return to active work within a reasonable time. Also, included is mutually agreed-upon rotation of personnel and equipment.

Note on Article II

These terms and corresponding definitions are drawn from the four existing water and wastewater agreements for Mutual Aid and Assistance. Only the definition for emergency is noteworthy. The Model Agreement specifies a definition of an emergency that includes disasters that are “likely to be” beyond the control of the participating utility. As explained in the Note for Article V, this permits a participating utility to request assistance prior to the onset of a disaster. The request for aid does NOT require a declaration of an emergency by the local or state agencies, and the aid may be provided during the emergency response or recovery phases. This approach is consistent with the California and Washington Agreements but differs from the Florida and Texas Agreements, which limit requests for Mutual Aid and Assistance to post-disaster periods.

ARTICLE III. ADMINISTRATION

The Mutual Aid and Assistance Program shall be administered through Regional Committee and, as needed, a Statewide Committee. The purpose of the Regional Committee is to provide local coordination of the Mutual Aid and Assistance Program, before, during and after an emergency event. The purpose of a Statewide Committee is to provide coordination on a statewide basis of the Mutual Aid and Assistance Program before, during and after an emergency. The Statewide Committee, under the leadership of an elected Chair, shall meet at least annually to address Mutual Aid and Assistance Program issues and to review emergency preparedness and response procedures. Under the leadership of the Chair, the Statewide Committee members shall plan and coordinate emergency response planning and response activities for the Mutual Aid and Assistance Program.

Note on Article III

The Model Agreement conceptualizes a Mutual Aid and Assistance Program administered through regional committees and a statewide committee. Article III formalizes this approach. The concept is drawn from a provision in California’s Agreement that establishes a committee system for pro-program administration. The Model Agreement outlines administering the program through regional or “local” committees that could promote coordination and help resolve program issues. However, the sample agreement recognizes that a committee system for Program administration may be too elaborate for some states. There are other, less formal ways to ensure efficient operation of a Mutual Aid and Assistance Program. For example, the Mutual Aid and Assistance agreement could require participating utilities to develop operational and planning procedures. The main objective is to have a well-developed system for Mutual Aid and Assistance whether through establishment of a committee system or a less formal approach. The more organized the utilities are, the less apt emergency response agencies are to step in.

ARTICLE IV. PROCEDURES

The Statewide Committee shall develop operational and planning procedures for the MI WARN Program. These procedures shall be reviewed at least annually and updated as needed.

It is the responsibility of each Member to develop its own operational and planning procedures that identify the critical components of its own infrastructure and its emergency response resources.

Note on Article IV

Article IV recognizes that an agreement by itself may be insufficient to cover the range of issues that arise in Mutual Aid and Assistance Programs. To have an efficient Program, participating utilities may need to supplement the Mutual Aid and Assistance agreement with a Program guidance document that includes detailed operational and planning procedures. This is the approach taken by the Washington Mutual Aid and Assistance Program. That Program has a Mutual Aid and Assistance agreement that sets forth general procedures and standards. To supplement the agreement, participating utilities developed a Mutual Aid and Assistance Program Manual and a Mutual Aid and Assistance Handbook.

ARTICLE V. REQUESTS FOR ASSISTANCE

- A. Member Responsibility** – Within forty-eight (48) hours after execution of this Agreement, Members shall identify an Authorized Official and alternates; provide contact information, including 24-hour access; and maintain resource information made available for mutual aid and assistance response.

In the event of an Emergency, a Member's Authorize Official may request mutual aid and assistance from a Member. Requests for assistance can be made orally or in writing. When made orally, the request for assistance shall be prepared in writing as soon as practicable after the oral request. Requests for assistance shall be directed to the Authorized Official of a Member. Specific protocols for requesting aid are provided in the required procedures (Article IV).

- B. Response to a Request for Assistance** – After a Member receives a request for assistance, the Authorize Official shall evaluate whether resources are available to respond to the request for assistance. As soon as possible after completing the evaluation, the Authorize Official shall inform the Requesting Member whether it has the resources to respond. If the Member is willing and able to provide assistance, the Member shall inform the Requesting Member about the type of available resources and the approximate arrival time of such assistance.
- C. Discretion of Responding Member's Authorized Official** – Each Member recognizes and agrees that execution of this Agreement does not create any duty to respond to a request for assistance. When a

Member receives a request for assistance, the Authorized Official shall have absolute discretion as to the ability of that member to respond to a request for assistance. An Authorized Official's decisions on the availability of resources shall be final.

Notes on Article V

1. The Model Agreement sets a low threshold for when Members can request mutual aid and assistance. Article V permits requests for mutual aid and assistance in the event of an "Emergency." An "Emergency" under Article II is defined as "an event that is, or is likely to be, beyond the control of the services, personnel, equipment, and facilities of a Mutual Aid and Assistance Program Member." This definition has two noteworthy characteristics. First, the use of the word "event," rather than "disaster," broadens the situations in which Members can request mutual aid and assistance. Second, an Emergency includes events that are "likely to be" beyond the control of the participating utility. By including the "is likely to be" language, participating utilities can request mutual aid and assistance before an event overwhelms their resources. This approach envisions situations where pre-event response would be necessary to protect human health and property. The Florida and Texas Agreements do not allow for pre-event assistance requests.
2. Article V permits oral and written requests for assistance; however, when made orally, the requesting member must put the request in writing as soon as practicable. This approach balances the need to make a quick and prompt request with the need for accuracy.
3. The Model Agreement does not provide specific details on the type of information that must be provided when a participating utility requests assistance. This can be provided in the protocols that support the agreement. This approach is in contrast to the Florida and Texas Agreements that do list the information that must be provided when a member makes a request for assistance. Those agreements also require a responding member to provide certain information to the requesting member. Again, the Model Agreement adopted a different approach. Article V only requires responding members to indicate what resources will be provided and when the resources will arrive at the requesting member's facility.
4. The Model Agreement provides participating utilities with absolute discretion when deciding whether to respond to a request for assistance. This is consistent with all four existing water and wastewater Mutual Aid and Assistance agreements.

ARTICLE VI. RESPONDING MEMBER PERSONNEL

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

NIMS provides a consistent nationwide approach that allows federal, state, local and tribal governments as well as private sector and nongovernmental organizations to work together to manage incidents and disasters of all kinds. To be eligible for federal emergency management assistance, water and wastewater mutual aid and assistance programs must meet NIMS standards for emergency preparedness and response.

- B. Control** - Personnel sent by a Responding Member shall remain under the direct supervision and control of the Responding Member. The Requesting Member's Authorized Official shall coordinate response activities with the designated supervisor(s) of the Responding Members(s). Whenever practical, Responding Member personnel must be self-sufficient for up to 72 hours.

- C. Food and Shelter** - The Requesting Member shall supply reasonable food and shelter for the Responding Member personnel. If the Requesting Member fails to provide food and shelter for Responding Member personnel, the Responding Member's designated supervisor is authorized to secure the resources necessary to meet the needs of its personnel. The cost for such resources must not exceed the per diem rates established by the State of Michigan for that area. The Requesting Member remains responsible for reimbursing Responding Member for all costs associated with providing food and shelter, if such resources are not provided.
- D. Communication** - The Requesting Member shall provide Responding Member personnel with radio equipment as available, or radio frequency information to facilitate communications with local responders and utility personnel.
- E. Status** - Unless otherwise provided by law, the Responding Member's officers and employees retain the same privileges, immunities, rights, duties and benefits as provided in their respective jurisdictions.
- F. Licenses & Permits** - To the extent permitted by law, the Responding Member's personnel who hold licenses, certifications or permits issued by the State of Michigan evidencing professional, mechanical or other skills and when such assistance is sought by the Requesting Member, shall be allowed to carry out activities and tasks relevant to their respective credentials during the specified Period of Assistance.
- G. Right to Withdraw** - The Responding Member's Authorized Official retains the right to withdraw some or all of its resources at any time. Notice of intention to withdraw must be communicated to the Requesting Member's Authorized Official as soon as possible. Notice of withdrawal can be made orally or in writing and is within the complete discretion of the Responding Member. When made orally, the notice of withdrawal shall be prepared and submitted in writing as soon as practicable after the oral notice.

Notes on Article VI

1. The National Incident Management System (NIMS) provides a consistent nationwide approach that allows federal, state, local, and tribal governments as well as private sector and nongovernmental organizations to work together to manage incidents and disasters of all kinds. To be eligible for federal emergency management assistance, water and wastewater mutual aid and assistance programs must meet NIMS standards for emergency preparedness and response.
2. The Model Agreement promotes "home" supervisory control over personnel. This approach recognizes that personnel will likely work better with their regular supervisors. To ensure an efficient response, Article VI requires responding member supervisors to coordinate with the requesting member's authorized official.
3. Article VI requires the requesting member to supply food and shelter to responding member personnel. This may be too onerous given that the requesting member will be faced with an emergency when it makes a request for Mutual Aid and Assistance. Accordingly, Article VI permits the requesting member to reimburse the responding member for food and shelter costs rather than securing such provisions.

4. Article VI includes a provision that allows the responding member to withdraw some or all of its resources at any time. This approach limits the commitment of the responding member. If a situation arose in the responding member's facility, resources could be withdrawn as appropriate. The Model Agreement promotes assistance because participating utilities would be less likely to withhold resources out of concern that they could not respond to needs at their own facilities.

5. Licensing and permitting authority will most likely not be an issue for intrastate mutual aid. However, this Agreement is drafted to permit assistance under the Interstate Emergency Management Assistance Compact and an Interstate Mutual Aid and Assistance Program for water and wastewater utilities, if such a program were established (see Article XIX). Because state-issued licensing and permitting credentials vary, it is important to clarify what actions and tasks responding member personnel can take when participating in interstate mutual aid and assistance. The licensing and permitting provision allows the maximum utilization of the professional skills held by responding member personnel. However, it does provide responding member personnel with authority to conduct activities or tasks that may only be completed by those holding locally issued professional credentials.

ARTICLE VII. COST REIMBURSEMENT

Unless otherwise mutually agreed in whole or in part, the Requesting Member shall reimburse the Responding Member for each of the following categories of costs incurred while providing aid and assistance during the specified Period of Assistance.

A. Personnel - Responding Member personnel are to be paid for work completed during a specified Period of Assistance according to the terms provided in their employment contracts or other conditions of employment. The Responding Member 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 must 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 a specified Period of Assistance. At a minimum, rates for equipment use must be based on the FEMA Schedule of Equipment Rates. If a Responding Member uses rates different from those in the FEMA Schedule of Equipment Rates, The

Responding member must provide such rates in writing to the Requesting Member's Authorized Official prior to supplying resources. Mutual agreement on which rates are used must be reached in writing prior to dispatch of the equipment. Reimbursement for equipment not referenced on the FEMA Schedule of Equipment Rates must be developed based on actual recovery of costs. In the event the Responding Member's equipment is damaged during the Period of Recovery that is not caused by carelessness, negligence or operator error on the part of the Responding member, the Requesting Member shall reimburse the Responding Member for the repair or replacement of the damaged equipment. Damage must be reasonably attributed to the specific response and taking into consideration normal wear and tear.

C. Materials and Supplies - The Requesting Member 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 Responding Member or their utility personnel. The Requesting Member must reimburse the Responding Member in kind or at actual replacement cost, plus handling charges, for use of expendable or non-returnable supplies. The Responding Member must not charge direct fees or rental charges to the Requesting Member for other supplies and reusable items that are returned as soon as practicable to the Responding Member in clean, damage-free condition. Reusable supplies that are returned to the Responding Member with damage must be treated as expendable supplies for the purposes of cost reimbursement.

D. Incidental Costs - Other reasonably related incidental costs that are accrued by the Responding Member during the specified Period of Assistance shall be paid by the Requesting Member. Incidental costs include travel costs to deploy personnel to the Requesting Member's location, shipping costs to transport equipment, etc.

E. Payment Period - The Responding Member must provide an itemized bill to the Requesting Member, listing the services provided, the dates services were provided, and the amount of payment due for all expenses it incurred as a result of providing assistance under this Agreement. The Responding Member shall send the itemized bill not later than ninety (90) days following the end of the Period of Assistance. The Requesting Member must pay the bill in full on or before the sixtieth (60th) day following the billing date. The Requesting Member shall return any invalid or incomplete invoice to the Responding Member within thirty (30) days after the Requesting Member receives the invoice. An explanation will accompany the invoice that states the reason for the return and any information needed to correct the invoice. Unpaid bills become delinquent upon the sixty-first (61st) day following the billing date unless alternate payment agreement between parties can be reached. Once a bill is determined to be delinquent, it shall accrue interest at the rate of prime plus two percent (2%) per annum as reported by the Wall Street Journal.

F. Disputed Billings - Those undisputed portions of a bill shall be paid under the payment plan specified above. Only the disputed portions should be sent to arbitration under Article VIII.

Notes on Article VII

1. Mutual Aid programs established in the 1950s did not have cost reimbursement procedures. Rather, program members would provide assistance at no charge, with the understanding that assistance would be provided to them when they were in need. For those utilities that wish to abide by that principle, the initial statement of Article VII allows the requesting and responding member to determine which resources could be exchanged without cost. Because public resources cannot normally be provided to private organizations, this process is appropriate only when the assistance is exchanged between private utilities.

2. For those utilities that seek reimbursement for services, Article VII reflects the cost reimbursement procedures set forth in the four existing water and wastewater agreements for Mutual Aid and Assistance. To qualify for FEMA cost reimbursement, this Article must be included in a mutual aid agreement.
3. In general, private organizations cannot receive public funds. This rule prevents gifts of private funds to private organizations. However, public funds can be used to reimburse private organizations for costs incurred as a result of providing assistance to a public entity as long as the costs are identified. Accordingly, Article VII requires an itemized bill for all expenses incurred during a Period of Assistance.
4. The Model Agreement suggests that procedures include a penalty provision for unpaid bills. Providing a penalty provision will promote timely reimbursement to the requesting member.

ARTICLE VIII. DISPUTE RESOLUTION

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

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

Note on Article VIII

Article VIII sets forth a two-tiered process for handling disputes. First, members must try negotiation. If unsuccessful, then the matter must be resolved through arbitration. Arbitration is much faster and less expensive than traditional civil litigation. The Rules of the American Arbitration Association are widely

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recognized and often cited in arbitration clauses. However, a dispute resolution provision could include specific procedures for arbitration rather than require use of procedures developed by the American Arbitration Association. The Florida and Texas Agreements take this approach.

ARTICLE IX. INSURANCE

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

Notes on Article IX

1. Article XIII requires members to carry insurance to protect against risks associated with participation in the Mutual Aid and Assistance Program. This provision provides a secure means of covering risks associated with participation in the Mutual Aid and Assistance Program.
2. A requirement to carry insurance could be alternative to the indemnity provisions provided in Articles IX and X. That is, rather than place the burden on the requesting member to indemnify the responding member, the mutual aid and assistance agreement could provide that all members bear the risks of their

own actions. The Florida and Texas Agreements take this approach; however, these agreements do not require participating utilities to obtain insurance.

ARTICLE X. INDEMNITY AND IMMUNITY

IDEMNITY

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

IMMUNITY

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

Notes on Article X

1. Article IX sets forth a comprehensive indemnity provision. The provision requires the requesting member to indemnify responding members and their officers and employees. This requirement protects responding members from the costs associated with civil suits that arise from, or are related to, providing Mutual Aid and Assistance. The Model Agreement allows an indemnity provision that would encourage participating utilities to provide assistance in the event of an emergency.

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2. However, it is important to recognize that Article IX places an added burden on members that request assistance. The duty to indemnify, along with other requesting member obligations set forth in the Model Agreement, may deter participating utilities from utilizing the Mutual Aid and Assistance Program. An alternative approach is provided in the Florida and Texas Agreements. Those agreements require each member to bear the risks associated with participating in the Mutual Aid and Assistance Program. This includes the risk of facing civil liability that arises from, or is related to, providing Mutual Aid and Assistance. This approach reduces the burdens on members that request assistance under the Mutual Aid and Assistance Program.

ARTICLE XI. 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 Utilities who receive and provide assistance shall indemnify and hold harmless those Utilities whose involvement in the transaction or occurrence that is the subject of such claim, demand, or other proceeding is limited to execution of this Agreement.

Note on Article XI

A lawsuit or similar action that arises from or is related to a Mutual Aid and Assistance response may name all participating utilities as defendants regardless of their involvement in the transaction or occurrence that gave rise to the suit. Article X protects non-responding members from costs associated with lawsuits or similar actions. This protection would encourage participation in the Mutual Aid and Assistance Program. Water and wastewater utilities would not incur additional liability by participating in the Mutual Aid and Assistance Program.

ARTICLE XII. WORKER'S COMPENSATION CLAIMS

Each Member is responsible for providing worker's compensation benefits and administering worker's compensation for its own personnel as it would in the normal course of business.

Note on Article XII

Responding member personnel will effectively be working for the requesting member during a period of assistance. Accordingly, Article XI provides that the requesting member is responsible for worker's compensation claims filed by responding member personnel if such claims arise from or are related to providing assistance to the requesting member under the Mutual Aid and Assistance Program.

ARTICLE XIII. NOTICE

A Member who becomes aware of a claim or suit that in any way, directly or indirectly contingently or otherwise, affects or might affect other Members of this Agreement shall provide prompt and timely notice to the Members who may be affected by the suite or claim. Each Member reserves the right to participate in the defense of such claims or suits as necessary to protect its own interests.

Note on Article XIII

Article XII recognizes that Members of the Agreement need to know about claims or suits that affect, or might affect, them. The Article also preserves the right of a Member to defend itself in any claim or suit that affects its interests.

ARTICLE XIV. EFFECTIVE DATE

This Agreement shall be effective after the Water and Wastewater Utility's authorized representative executes the Agreement and the Network Administrator receives the Agreement. The Administrator shall maintain a list of all Members.

Note on Article XIV

Article XIV provides a standard approach on the process for participation in the Mutual Aid and Assistance Program. In contrast, the Washington Agreement requires a utility to adopt or authorize the program agreement by resolution. The utility must then execute the agreement and send it to the Washington Association of Sewer and Water Districts.

ARTICLE XV. WITHDRAWAL

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

Note on Article XV

Article XV recognizes that a Member may decide to withdraw from a Mutual Aid and Assistance Program.

ARTICLE XVI. MODIFICATION

No provision in this Agreement may be modified, altered, or rescinded by individual parties to the Agreement. Modification to this Agreement may be due to programmatic operational changes to support the agreement. Modifications require a simple majority vote of Members. The Chair of the Steering Committee 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.

Note on Article XVI

Article XVI recognizes that members may want to modify the Program agreement. There may also be circumstances that require modification of the Program agreement. For example, creation of an interstate water and wastewater utility Mutual Aid and Assistance Program may require agreement modifications.

ARTICLE XVII. 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.

ARTICLE XVII. PRIOR AGREEMENTS

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

Note on Article XVII

Members of the Mutual Aid and Assistance Program may already have assistance agreements in place with utilities. Article XVII ensures that existing assistance agreements do not interfere with the operation of the intrastate Mutual Aid and Assistance Program.

ARTICLE XVIII. 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.

Note on Article XVIII

Article XVIII covers issues of contract law that may interfere with the operation of the Mutual Aid and Assistance Program. The prohibition on third-party beneficiaries limits all rights and benefits under the agreement to participating utilities. Thus, a local government could not assert rights under this agreement as a third-party beneficiary. Article XVIII also prohibits the assignment of benefits created by the agreement to third parties. In other words, a participating utility could not assign its ability to request mutual aid and assistance to a non-participating utility. Prohibiting the delegation of duties ensures that only the participating utilities are involved in the Mutual Aid and Assistance Program.

ARTICLE XIX. INTRASTATE & INTERSTATE MUTUAL AID AND ASSISTANCE PROGRAMS

To the extent practicable, Members of this Agreement shall participate in Mutual Aid and Assistance activities conducted under the State of Michigan Intrastate Mutual Aid and Assistance Program and Interstate Emergency management Assistance Compact (EMAC). Members may voluntarily agree to participate in an interstate Mutual Aid and Assistance Program for water and wastewater utilities through this Agreement if such a Program were established.

Note on Article XIX

At least 13 states have an overarching statewide mutual aid program. Article XIX requires coordination with the statewide mutual aid program, if one exists. Additionally, Article XIX permits participation in an interstate water and wastewater mutual aid program if one were established. ‘

ARTICLE XX. RECORDS, DOCUMENTS AND SENSITIVE INFORMATION

All records, documents, writings or other information produces or used by the parties to this Agreement, which, under the laws of the State of Michigan, is classified as public or privileged, will be treated as such by the other parties to this Agreement. The parties to this Agreement shall not use any information, systems or records made available to them for any purpose other than to fulfill their contractual duties specified in this Agreement. Both Requesting and Responding Members acknowledge that they will have access to sensitive information of others that may be considered sensitive or protected under the laws of the State of Michigan. If a Member receives a request to provide information of another Member or a third party, the Member receiving such request shall notify the other Member and they shall jointly agree upon what documentation is to be released.

NOW, THEREFORE, in consideration of the covenants and obligations contained herein, the participating utilities listed here, as a Participating Utility duly executes this Water/Wastewater Mutual Aid Agreement this _____ day of _____, 20__.

Water/Wastewater Utility Authorized Official(s):

By: _____

By: _____

Title: _____

Title: _____

Please Print Name

Please Print Name

Name of Participating Utility: _____

Please Print Name of Utility

(Please note: Attach a copy of your MI WARN registration form to this document when you submit it. Thank you.)