

MICHIGAN WATER/WASTEWATER AGENCY RESPONSE NETWORK

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 Urban Cooperative Act of 1967, being MCL 124.501 et seq. (the "Act") permits a public bodies and private entities to work together to provide mutual aid and assistance to both public and private water and wastewater utilities in need of emergency assistance caused by natural or man-made disasters.

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.

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.

ARTICLE II. DEFINITIONS

A. Agreement - The Michigan Water/Wastewater Agency Response Network Mutual Aid Agreement.

B. Authorized Official - An employee, agent, or official of a Member who is authorized by the Member's governing board or management to request assistance or 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. The request for aid does not require an official declaration of an emergency by the local or state agencies, and the aid may be provided during the emergency response or recovery phases.

D. Member - Any public body or political subdivision 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., MIAWWA, MIAPWA, MDEQ, MWEA, RCAP, MRWA, WEF, MSPEMHS, 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

a Member. Specific protocols for requesting aid are set forth in the operational and planning procedures referenced in Article IV, above.

B. Response to a Request for Assistance – After a Member receives a request for assistance, the Authorized Official shall evaluate whether resources are available to respond to the request for assistance. As soon as possible after completing the evaluation, the Authorized 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.

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.

J. Liability. Each Member 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 Members shall not be responsible for any liability or costs associated with those acts and the defense of those acts for Members outside of their political jurisdictions. It is agreed that none of the Members shall be liable for failure to respond for any reason to any request for assistance or for leaving the scene of an Emergency with proper notice after responding to a Request for Assistance.

K. Insurance. Each Member shall be responsible for insuring its activities as they relate to MI WARN. MI WARN may choose to require each Member to provide Certificates of Insurance or Self-Insurance demonstrating the Member's proper coverage and limits. In the event any Member has a lapse in proper insurance coverage, as determined by the Statewide Committee, the Member may be suspended from participation in MI WARN.

L. Confidential Information. To the extent permitted by law, Members shall maintain the strictest confidence and shall take all reasonable steps necessary to prevent the disclosure of any confidential information relating to the ongoing security measures of a public body, capabilities and plans for responding to a violation of the Michigan anti-terrorism act, chapter LXXXIII-A of the Michigan penal code, 1931 PA 328, MCL 750.543a to 750.543z, emergency response plans, risk planning documents, threat assessments, and domestic preparedness strategies, including but not limited to confidential information relating to the plans, specifications and location of water and wastewater facilities provided to it by another Member pursuant to this Agreement. If any Member or third party requests or demands by subpoena or otherwise, that Member shall immediately notify the owner of the confidential information and shall take all reasonable steps necessary to prevent the disclosure of any confidential information by asserting all applicable rights and privileges with respect to such information and shall cooperate fully in any judicial or administrative proceeding related thereto.

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. Re-requesting Member reimbursement to the Responding Member must consider all personnel costs, including salaries or hourly wages, costs for fringe benefits, and indirect but necessary costs.

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.

ARTICLE VIII. DISPUTE RESOLUTION

If any controversy or claim arises out of or relates to the Agreement, including but not limited to an alleged breach of the Agreement, the disputing Members may agree in writing, if authorized by the Members' governing body, to arbitration of the matter in accordance with the rules of the American Arbitration Association. This provision does not waive any right of any party to file the claim in appropriate court having jurisdiction.

ARTICLE IX. SIGNATORY INDEMNIFICATION

In the event of a liability, claim demand, action or proceeding of whatever kind or nature arising out of a specified event of Assistance, the Members who receive and provide assistance shall indemnify and hold harmless those non-responding Members 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.

In the event of a claim for property damage or bodily injury by a non-party hereto, arising from an Event of Assistance neither the Responding Member nor the Requesting Member will be deemed to indemnify, defend or hold harmless the other from any act or omission of the Member's officers, employees, agents, contractors or volunteers acting under this Agreement.

ARTICLE X. 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.

ARTICLE XI. NOTICE

Nothing within this Agreement shall prohibit a Member from participating in other mutual aid agreements and this Agreement shall not supersede prior Agreements between Members unless the prior Agreement is terminated.

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-Member beneficiary. Assignments of benefits and delegations of duties created by this Agreement are prohibited and must be without effect. Any Member may be removed from participation in this Mutual Aid Agreement by majority vote of the Members of the applicable Regional Committee, or State Committee, with adequate notice and a right to be heard at a regular or special meeting.

ARTICLE XVIII. INTRASTATE & INTERSTATE MUTUAL AID AND ASSISTANCE PROGRAMS

To the extent practicable, Members of MI WARN 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.

ARTICLE XIX. RECORDS, DOCUMENTS AND SENSITIVE INFORMATION

All records, documents, writings or other information produced 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 the Member receiving such request shall notify the other Member and they shall jointly agree upon what documentation is to be released.

ARTICLE XX. MISCELLANEOUS

A. 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 Member. The parties have taken all actions and secured all approvals necessary to authorize and complete this Agreement.

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 any party shall subsequently affect its right to require strict performance of this Agreement.

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 4th day of December, 2008.

Water/Wastewater Utility Authorized Official(s):

By: _____

By: _____

Title: <Lead Elected Officials Title>

Title: <Utility Leader's Title>

<Printed Name of Lead Official>

<Printed Name of Utility Lead>

Name of Participating Utility: <Utility Name>

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