



MEMORANDUM

TO: Public Works Committee

FROM: Carl S. Goldsmith, Director of Public Works *CS*

SUBJECT: Proposed ILWARN and IPWMAN Mutual Aid Agreements

DATE: July 23, 2009

Attached are proposed resolutions and Agreements regarding the Illinois Water/Wastewater Agency Response Network (ILWARN) and the Illinois Public Works Mutual Aid Network (IPWMAN). Both networks are similar to those in most other states that share public works emergency response services. The Village is not yet a member of either network. By becoming a member, the Village could benefit from training exercises and could voluntarily share resources with other member communities when needed, thereby better serving our residents in times of need. Staff requests that the Public Works Committee provide a recommendation to the Village Board regarding potential membership in both networks.

Background:

The Village is now and will continue to be a member of the DuPage County Mutual Aid network so the Village is in good position to share resources for incidents affecting only member communities in DuPage County. However, an incident impacting a large part of the County or elsewhere in the metropolitan area could deplete public works resources. An advantage to both ILWARN and IPWMAN is that both encompass the entire state. Both agreements are also compliant with similar networks in nearly every other state in the country. The attached list of member communities of both networks shows that nearly all are outside of DuPage County. Thus, help from others inside as well as outside of Illinois would be available for a large-scale event such as a flood, earthquake, tornado, winter storm, epidemic and sabotage.

While IPWMAN deals more generally with all functions of public works, ILWARN is specific to sewerage and water distribution & treatment. ILWARN member communities are prepared to share specialized assistance in the form of equipment (e.g. trucks, spare parts, chemicals, vehicles, pumps, generators, cranes, excavators & chlorinators), supplies (lab materials, chemicals & fuel) and personnel (e.g. plant operators, engineers, electricians, mechanics, technicians & locators). As water and sewer services are among the most critical functions of local government, the training exercises and emergency response capabilities of ILWARN would be of great benefit.

For both networks, equipment and personnel are indemnified and under the direction of the requesting community but they may be withdrawn at any time. Costs are reimbursed by the requesting community. Task-specific training and exercises are provided. There is no cost to join ILWARN and the cost for IPWMAN is \$250 annually.

The Village Attorney has advised that neither agreement provides for dispute resolution or late payment interest provisions. As such, the responding agency will rely on the goodwill and financial ability of the requesting member to reimburse eligible expenses. Therefore, the option to respond to a particular incident will be a voluntary, case-by-case decision that will have to consider financial aspects along with the direness of the need.

Recommendation:

Village staff, including the Emergency Planning Team, recommends that the Public Works Committee recommend to the Board of Trustees that the Village should become a member of both ILWARN and IPWMAN.

ILWARN Member Utilities (34 Total):

ANNAWAN WATER/SEWER DEPT
Aqua Illinois-Kankakee
Baxter & Woodman, Inc.
Central Lake County Joint Action Water Agency
City of Decatur *
City of Elgin
City of Evanston
City of Fairbury Water/Wastewater
City of Freeport Water & Sewer Commission
City of Highland Park
City Water, Light & Power
East Hazel Crest
Fox River Water Reclamation District
ISAWWA
Lake in the Hills Sanitary District
Laurie
Lost Lake Utility District
Metropolitan Water Reclamation District of Greater Chicago
Montgomery County Ohio Water Services
NEORS
North Park Public Water District
Northwest Suburban Municipal Joint Action Water Agency
ORCAP
Rochelle Municipal Utilities
Southern Water
Test Hobbes
Test JB
Town of Normal Water Dept.
TXWARN
United City of Yorkville
Village of Forsyth
Village of Mt Auburn
Village of Round Lake
W. S. Darley & Co.

IPWMAN Member Municipalities (19 Total):

Village of Bedford Park
Blackhawk Township
Village of Bolingbrook #
Village of Bridgeview
City of Champaign
Village of Coal Valley
City of Danville
City of Decatur *
Village of Gurnee
City of LaSalle
Village of Libertyville
Village of Lindenhurst
City of Macomb
Village of Mundelein
City of Rolling Meadows
Stephenson County
City of Urbana
Village of Villa Park #
Village of Wauconda

* member of ILWARN & IPWMAN

DuPage County entity

Illinois Water and Wastewater Mutual Aid and Assistance Agreement

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

WHEREAS, the Constitution of the State of Illinois, 1970, Article VII, Section 10, (hereinafter "Act") authorizes units of local government to contract or otherwise associate among themselves in any manner not prohibited by law or ordinance; and

WHEREAS, any community (including Chicago) with a population over 25,000 is a home rule unit of local government under the 1970 Constitution of the State of Illinois and as such may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the Act provides that any one or more public agencies may contract with any one or more other public agencies to set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties; and

WHEREAS, the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., provides that any power or powers, privileges or authority exercised or which may be exercised by a unit of local government may be exercised and enjoyed jointly with any other unit of local government including a unit of local government from another state; and

WHEREAS, the Parties to this Agreement may voluntarily agree to participate in intrastate mutual aid and assistance activities conducted under the Illinois Intrastate Mutual Aid and Assistance Program and the Interstate Emergency Management Assistance Compact (EMAC). Parties may voluntarily agree to participate in an interstate Mutual Aid and Assistance Program for water and waste water agencies through this Agreement if such a program were established; and

WHEREAS, some of the Parties hereto are units of local government as defined by the Constitution of the State of Illinois and the Intergovernmental Cooperation Act; and

WHEREAS, the Parties recognize that they are vulnerable to a variety of potential natural and man-made disasters; and

WHEREAS, the Parties to this Agreement wish to provide mutual aid and assistance to one another during times of utility emergencies; and

NOW, THEREFORE, in consideration of the option of each signatory hereto to provide/receive mutual aid and assistance to/from any other signatory hereto upon the terms and conditions set forth herein, the Parties agree as follows:

SECTION I: PURPOSE

Recognizing that emergencies may require aid or assistance in the form of personnel, equipment, materials, services and supplies from outside the area of impact, the signatory utilities hereby establish an Intrastate Mutual Aid and Assistance Program called the Illinois Water and Wastewater Agency Response Network (ILWARN). Through ILWARN, Members coordinate response activities and share resources during emergencies. This Agreement sets forth the procedures and standards for the administration of ILWARN.

SECTION II: DEFINITIONS

The following definitions will apply to the terms appearing in this Agreement.

- A. Authorized Official – An employee or officer of a Member utility that is authorized to:
 - 1. Request assistance;
 - 2. Offer assistance;
 - 3. Refuse to offer assistance or
 - 4. Withdraw assistance under this Agreement.

- B. Emergency – A natural or human caused event or circumstance causing, or imminently threatening to cause, loss of life, injury to person or property, human suffering or financial loss, and includes, but is not limited to, fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills or releases of oil or hazardous material, contamination, utility or transportation emergencies, disease, blight, infestation, civil disturbance, riot, intentional acts, sabotage and war that is, or could reasonably be beyond the capability of the services, personnel, equipment, and facilities of an ILWARN Member to fully manage and mitigate internally.

- C. Member – Any public or private Water or Wastewater Utility that manifests its intent to participate in the Mutual Aid and Assistance Program by executing this Agreement.
 - 1. Requesting Member – A Member who requests aid or assistance under the Illinois Water and Wastewater Agency Response Network (ILWARN).
 - 2. Responding Member – A Member that responds to a request for aid or assistance under the Illinois Water and Wastewater Agency Response Network (ILWARN).
 - 3. Non-Responding Member - A Member or Associate Member that does not provide aid or assistance during a Period of Assistance under the Illinois Water and Wastewater Agency Response Network (ILWARN).

- D. Associate Members – Any non-utility participant, approved by the ILWARN Steering Committee, that provides a support role for the ILWARN program, for example; Illinois Environmental Protection Agency, Illinois Emergency Management Agency, Illinois Department of Public Health, or associations, that do not sign the ILWARN Agreement.

- E. Confidential Information - Any document shared with any signatory of this Agreement that is marked confidential, including but not limited to any map, report, notes, papers, opinion, or e-mail which relates to the system vulnerabilities of a Member.
- F. Period of Assistance – A specified period of time when a Responding Member assists a Requesting Member. The period commences when personnel, equipment, materials, services, or supplies depart from Responding Member's facility and ends when the resources return to their facility (portal to portal). All protections identified in the Agreement apply during this period. The specified Period of Assistance may occur during response to or recovery from an emergency, as previously defined.
- G. National Incident Management System (NIMS): A national, standardized approach to incident management and response that sets uniform processes and procedures for emergency response operations.
- H. Illinois Section AWWA (ISAWWA) - The Illinois Section of the American Water Works Association.
- I. ILWARN – The acronym for the Illinois Water and Wastewater Agency Response Network.
- J. Steering Committee – Statewide committee that shall plan and coordinate emergency planning and response activities for the Illinois Water and Wastewater Agency Response Network (ILWARN).

SECTION III: RESPONSIBILITY OF PARTIES

- A. *PROVISION OF AID.* Each Member recognizes that it may be requested to provide aid and assistance at a time when it is necessary to provide similar aid and assistance to the Member's own constituents. This Agreement shall not be construed to impose any unconditional obligation on any Member to provide aid and assistance. A Member may choose not to render aid and assistance for any reason.
- B. *RECRUITMENT.* The Members hereby encourage each other to enlist other agencies to adopt and execute this Agreement.
- C. *IMMUNITIES.* All immunities provided by law to the Members shall be fully applicable to the Members providing or receiving aid and assistance pursuant to this Agreement, including, but not limited to, the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101, et seq.

SECTION IV: OPERATIONAL PROCEDURES:

In coordination with the emergency management and public health systems of the state, the ILWARN Steering Committee shall develop operational and planning procedures for the Illinois Water and Wastewater Agency Response Network (ILWARN). These procedures shall be reviewed at least annually and updated as needed by the ILWARN Steering Committee.

SECTION V: RESPONDING MEMBER PERSONNEL

- A. National Incident Management System (NIMS) - When providing assistance under this Agreement, the Requesting Member and Responding Member should be organized and should function under the NIMS.
- B. Control - While employees may be provided under this Agreement by a Responding Member, the Responding Member's employees come under the direction and control of the Requesting Member, consistent with the NIMS Incident Command System to address the needs identified by the Requesting Member. The Requesting Member's Authorized Official shall coordinate response activities with the designated supervisor(s) of the Responding Member(s). The Responding Member's designated supervisor(s) must keep accurate records of work performed by personnel during the specified Period of Assistance.
- C. Food and Shelter – Whenever practical, Responding Member's personnel must be self sufficient for up to 72 hours. When possible, the Requesting Member shall supply reasonable food and shelter for Responding Member's personnel. If the Requesting Member is unable to provide food and shelter for Responding personnel, the Responding Member's designated supervisor is authorized to secure the resources necessary to meet the needs of its personnel. Except as provided below, the cost for such resources must not exceed the State per diem rates for that area. To the extent food and shelter costs exceed the State per diem rates for the area, the Responding Member must demonstrate that the additional costs were reasonable and necessary under the circumstances. Unless otherwise agreed to in writing, the Requesting Member remains responsible for reimbursing the Responding Member for all reasonable and necessary 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 program existing radios, in order to facilitate communications with local responders and utility personnel.
- E. Status - Unless otherwise provided by law, the Responding Member's officers and employees, and agents retain the same privileges, immunities, rights, duties, and benefits as provided in their respective jurisdictions.
- F. Licenses and Permits – To the extent permitted by law, Responding Member personnel that hold licenses, certificates, or permits evidencing professional, mechanical, or other skills shall be allowed to carry out activities and tasks relevant and related to their respective credentials during the specified Period of Assistance.
- G. Right to Withdraw - The Responding Member's Authorized Official retains the right to withdraw some or all of its resources at any time for any reason in the Responding Member's sole and absolute discretion. Notice of intention to withdraw must be communicated to the Requesting Member's Authorized Official as soon as is practicable under the circumstances.

SECTION VI: DOCUMENTATION OF COST & REIMBURSEMENT OF COST

The Requesting Member shall reimburse the Responding Member for each of the following categories of costs incurred during the specified Period of Assistance as agreed in whole or in part by both parties; provided, that any Responding Member may assume in whole or in part such loss, damage, expense, or other cost, or may loan such personnel, equipment or donate such personnel, equipment, materials, supplies or services to the Requesting Member without charge or cost.

- A. Personnel and Services—The Responding Member shall be reimbursed by the Requesting Member for personnel and services costs incurred for work performed during the specified Period of Assistance. Responding Member personnel and services costs shall be calculated according to the terms provided in their employment contracts or other conditions of employment. The Responding Member's 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 shall consider all personnel or services 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 the specified Period of Assistance, including, but not limited to, reasonable rental rates, all fuel, lubrication, maintenance, transportation, and loading/unloading of loaned equipment. All equipment shall be returned to the Responding Member in good working order as soon as is practicable and reasonable under the circumstances. As a minimum, rates for equipment use must be based on the Federal Emergency Management Agency's (FEMA) Schedule of Equipment Rates or rates published by the Illinois Department of Transportation (IDOT). If a Responding Member uses rates different from those in the FEMA Schedule of Equipment Rates or the IDOT Equipment Rate Schedule, the Responding Member must provide such rates orally or in writing to the Requesting Member prior to supplying the equipment. Mutual agreement on rates other than the above must be reached in writing prior to dispatch of the equipment. Reimbursement for equipment not referenced on the FEMA Schedule of Equipment Rates or the IDOT rate schedule must be developed based on actual recovery of costs. If Responding Member must lease a piece of equipment while its equipment is being repaired, Requesting Member shall reimburse Responding Member for such rental costs.
- C. Materials and Supplies – 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 to the Responding Member in a clean, damage-free condition. Reusable supplies that are returned to the Responding Member with damage must be treated as expendable supplies for purposes of cost reimbursement.
- D. Payment Period – Unless mutually agreed upon otherwise, the Responding Member must provide an itemized bill to the Requesting Member for all expenses incurred by the Responding Member while providing assistance under this Agreement. The Responding Member must send the itemized bill not later than ninety (90) days following the end of the Period of Assistance. The Responding Member may request additional periods of time within which to submit the itemized bill, and Requesting Member shall not unreasonably withhold consent to such request. The Requesting Member must pay the bill in full on or before the sixtieth (60th) day following the billing date. The Requesting

Member may request additional periods of time within which to pay the itemized bill, and Responding Member shall not unreasonably withhold consent to such request, provided, however, that all payment shall occur not later than one year after the date a final itemized bill is submitted to the Requesting Member.

- E. Records - Each Responding Member and its duly authorized representatives shall have access to a Requesting Member's books, documents, notes, reports, papers, and records which are directly pertinent to this Agreement for the purposes of reviewing the accuracy of a cost, bill or making a financial, maintenance, or regulatory audit. Each Requesting Member and their duly authorized representatives shall have access to a Responding Member's books, documents, notes, reports, papers and records which are directly pertinent to this Agreement for the purposes of reviewing the accuracy of a cost, bill or making a financial, maintenance, or regulatory audit. Such records shall be maintained for at least three (3) years or longer where required by law.

SECTION VII: DISPUTES

If any controversy or claim arises out of, or relates to, the execution of the Agreement, including, but not limited to, alleged breach of the Agreement, the disputing Member shall first attempt to resolve the dispute by negotiation, followed by mediation, and finally shall be settled by arbitration in accordance with the Rules of the American Arbitration Association. Any court of competent jurisdiction may enter the judgment rendered by the arbitrators as final judgment that is binding on the parties. Each party involved in such a controversy or claim shall bear its own costs for dispute resolution.

SECTION VIII: REQUESTING MEMBERS DUTY TO INDEMNIFY

The Requesting Member shall assume the defense of, fully indemnify and hold harmless, the Responding Member, its officers and employees, from all claims, loss, damage, injury, and liability of every kind, nature, and description, directly or indirectly arising from Responding Member's work during a specified Period of Assistance. The scope of the Requesting Member's duty to indemnify includes, but is not limited to, suits arising from, or related to, negligent or wrongful use of equipment or supplies on loan to the Requesting Member, or faulty workmanship or other negligent acts, errors, or omissions by Requesting Member or the Responding Member personnel.

The Requesting Member's duty to indemnify is subject to, and shall be applied consistent with, the conditions set forth in Section IX of this Agreement.

SECTION IX: 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 Members who receive and provide assistance shall have a duty to defend, indemnify, save and hold harmless all Non-Responding Members, their officers, agents, and employees from any liability, claim, demand, action, or proceeding of whatever kind or nature arising out of a Period of Assistance.

SECTION X: WORKERS COMPENSATION CLAIMS

The Responding Member is responsible for providing worker's compensation benefits and administering worker's compensation for its employees. The Requesting Member is responsible

for providing worker's compensation benefits and administering worker's compensation for its employees.

SECTION XI: NOTICE OF CLAIM OR SUIT

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 suit or claim. Each Member reserves the right to participate in the defense of such claims or suits as necessary to protect its own interests.

SECTION XII: INSURANCE

Each Member shall bear the risk of liability for its utility and the utility's employees' acts and omissions and shall determine for itself what amount of insurance it should carry, if any. Each Member understands and agrees that any insurance coverage obtained shall in no way limit that Party's responsibility under Sections VIII and IX of this Agreement to indemnify and hold the other parties to this Agreement harmless from such liability.

SECTION XIII: SECURITY

Responding Members shall reasonably comply with the Security procedures of the Requesting Members.

SECTION XIV: CONFIDENTIAL INFORMATION

To the extent provided by law, any Member shall maintain in the strictest confidence and shall take all reasonable steps necessary to prevent the disclosure of any Confidential Information disclosed under this Agreement. If any Member, third party, or other entity requests or demands, by subpoena, Freedom of Information Act request, or otherwise, that a Member disclose any Confidential Information disclosed under this Agreement, the 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 relating thereto.

SECTION XV: EFFECTIVE DATE

This Agreement shall be effective after the Water and Wastewater Utility's authorized representative executes the Agreement and the Executive Director of the Illinois Section AWWA receives the Agreement. The Illinois Section AWWA shall maintain a list of all Members of the Mutual Aid and Assistance Program and maintain copies of the signed Agreement.

SECTION XVI: INITIAL TERM OF AGREEMENT; RENEWAL; TERMINATION

The initial term of this Agreement shall be one (1) year from its effective date. Thereafter, this Agreement shall automatically renew for additional one-year terms commencing on the anniversary of the effective date of this Agreement. Any Member may withdraw from this Agreement at any time by giving written notice to the Illinois Section AWWA. The notice shall

not be effective until sixty (60) days after the notice has been received by the Illinois Section AWWA. A Member's withdrawal from this Agreement shall not affect that Member's liability or obligation incurred under this Agreement prior to the date of withdrawal. This Agreement shall continue in force and effect as to all other Members until such time as a Member withdraws. Failure to ratify any proposed amendment within sixty (60) days will signify a Member's withdrawal from the Agreement.

SECTION XVII: SEVERABILITY – EFFECT ON OTHER AGREEMENTS

Should any clause, sentence, provision, paragraph, or other part of this Agreement be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Agreement. Each of the Members declares that it would have entered into this Agreement irrespective of the fact that any one or more of this Agreement's clauses, sentences, provisions, paragraphs, or other parts have been declared invalid. Accordingly, it is the intention of the Members that the remaining portions of this Agreement shall remain in full force and effect without regard to the clause(s), sentence(s), provision(s), paragraph(s), or other part(s) invalidated.

SECTION XVIII: INTRASTATE AND INTERSTATE MUTUAL AID AND ASSISTANCE PROGRAMS

To the extent practicable, Members of this Agreement may voluntarily participate in Mutual Aid and Assistance activities conducted under the Illinois Intrastate Mutual Aid and Assistance Program and the 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.

SECTION XIX: WAIVER

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

SECTION XX: PRIOR AGREEMENTS

To the extent that prior agreements between signatories to this Agreement are inconsistent with this Agreement, all prior agreements for mutual aid and assistance between the parties hereto are suspended.

SECTION XXI: PROHIBITION ON THIRD PARTIES AND ASSIGNMENT OF RIGHTS/DUTIES

This Agreement is for the sole benefit of the Members and no person or entity shall 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.

SECTION XXII: MODIFICATIONS

No provision of this Agreement may be modified, altered or rescinded by individual parties to the Agreement. Modifications to this Agreement may be due to programmatic operational changes

to support the agreement, legislative action, creation of an interstate aid and assistance agreement, or other developments. Modifications require a simple majority vote of all Members. The Illinois Section AWWA Executive Director 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.

SECTION XXIII: EXECUTION IN COUNTERPARTS

This Agreement is executed in counterparts. The existence of a duly executed and subsisting counterpart of this document by the Requesting Party and a duly executed and subsisting counterpart of this document by any Responding Party when on file with the ISAWWA will document the contract between the Requesting Party and any Responding Party for assistance provided to the former by the latter pursuant to the terms hereof. A Requesting or Responding Party may rely on the written certification of the ISAWWA as to the signatory status of any purported participant in the ILWARN program.

NOW, THEREFORE, the Water or Wastewater Utility listed here manifests its intent to be a Member of the Illinois Water and Wastewater Agency Response Network (ILWARN) by executing this Agreement on this _____ day of _____ 20__.

Water/Wastewater Utility:_____

By:_____

By:_____

Title:_____

Title_____

Please Print Name

Please Print Name

Approved as to form and legality

By:_____
Attorney for Utility

Please Print Name

PLEASE NOTE: Attach a copy of your ILWARN registration form to this document when you submit it. Thank you.

Illinois Public Works Mutual Aid Network Agreement

This Public Works Agreement (hereinafter "Agreement") is entered into by the Village of Lombard which has, by executing this Agreement, manifested its intent to participate in an Intrastate Program for Mutual Aid and Assistance, hereinafter entitled the "Illinois Public Works Mutual Aid Network (IPWMAN)"; and

WHEREAS, the Constitution of the State of Illinois, 1970, Article VII, Section 10, (hereinafter "Act") authorizes units of local government to contract or otherwise associate among themselves in any manner not prohibited by law or ordinance; and

WHEREAS, any community that is a home rule unit of local government under the 1970 Constitution of the State of Illinois and as such may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the Act provides that any one or more public agencies may contract with any one or more other public agencies to set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting Parties; and

WHEREAS, the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., provides that any power or powers, privileges or authority exercised or which may be exercised by a unit of local government may be exercised and enjoyed jointly with any other unit of local government including a unit of local government from another state; and

WHEREAS, the Parties to this Agreement may voluntarily agree to participate in mutual aid and assistance activities conducted under the State of Illinois Intrastate Mutual Aid and Assistance Program and the Interstate Emergency Management Assistance Compact (EMAC). Parties may voluntarily agree to participate in an interstate Mutual Aid and Assistance Program for public works related agencies including, but not limited to; local municipal public works departments, township road districts, unit road districts, county highway departments, public water agencies and public wastewater agencies or any other governmental entity that performs a public works function through this Agreement if such a program were established.

WHEREAS, the Parties hereto are units of local government as defined by the Constitution of the State of Illinois and the Intergovernmental Cooperation Act; and

WHEREAS, the Parties recognize that they are vulnerable to a variety of potential, natural and man-made disasters; and

WHEREAS, the Parties to this Agreement wish to provide mutual aid and assistance to one another during times of disaster or public works emergencies.

NOW, THEREFORE, the Parties agree as follows:

SECTION I: PURPOSE

The Illinois Public Works Mutual Aid Network (IPWMAN) program is hereby established to provide a method whereby public works related agencies, including, but not limited to, local municipal public works departments, township road districts, unit road districts, county highway departments, public water agencies and public wastewater agencies or any other governmental entity that performs a public works function in need mutual aid assistance may request aid and assistance in the form of personnel, equipment, materials and/or other associated services as necessary from other public works related agencies. The purpose of this Agreement is to formally document such a program.

SECTION II: DEFINITIONS

The following definitions will apply to the terms appearing in this Agreement.

A. *"AGENCY"* means any municipal public works agency, township road district, unit road district, county highway departments, publicly-owned water organization and publicly-owned wastewater organization or any other governmental entity that performs a public works function that abides by the provisions as found in this Agreement.

B. *"AID AND ASSISTANCE"* includes, but is not limited to, personnel, equipment, facilities, services, materials and supplies and any other resources needed to provide mutual aid response.

C. *"AUTHORIZED REPRESENTATIVE"* means a Party's employee who, by reason of his or her position, has been authorized, in writing by that Party, to request, offer, or provide aid and assistance pursuant to this Agreement. Each Party's initial authorized representative, and the representative's title, is listed on the contact list. If the title of the authorized representative as listed by name on the contact list has changed, such change shall have no effect on the authority of the authorized representative and the named person shall continue to be the authorized representative until a different person is named as the authorized representative in writing by the Party. In the event that the person who is listed as authorized representative is no longer employed by the Party, the successor in the office formerly held by the authorized representative shall automatically become the authorized representative unless the Party indicates otherwise in writing. Each Party's authorized representative shall be responsible to designate someone to supervise that Party's employees who are engaged in the receipt or furnishing of aid and assistance, including, but not limited to, opening of public ways; removal of debris; building of protective barriers; management of physical damage to structures and terrain; transportation of persons, supplies, and equipment; and repair and operation of municipal utilities.

D. *"BOARD OF DIRECTORS"* is a group of representatives from the Parties to the IPWMAN Agreement elected to organize and maintain the program. The Board of Directors shall consist of members of the IPWMAN. Qualifications and terms for the Board members shall be defined in the By-Laws of the Illinois Public Works Mutual Aid Network, Inc.

E. *"BOARD MEMBER"* is a representative of the Association (IPWMAN) serving on the Board of Directors.

F. *"DISASTER"* means a calamitous incident threatening loss of life or significant loss or damage to property, including, but not limited to flood, winter storm, hurricane, tornado, dam break, or other naturally-occurring catastrophe or man-made, accidental, military, or paramilitary incident, or biological or health disasters or a natural or manmade incident that is, or is likely to be, beyond the control of the services, personnel, equipment and facilities of a Party that requires assistance under this Mutual Aid and

NOW, THEREFORE, each of the Parties have caused this IPWMAN Mutual Aid Agreement to be executed by its duly authorized representative who has signed this Agreement as of the date set forth below.

Approved and executed this _____ day of _____, 20__.

For the Agency

By: _____

Attest: _____

APPROVED (as to form):

By: _____

On behalf of the Illinois Public Works Mutual Aid Network

Approved and executed this _____ day of _____, 20__.

By: _____
President of IPWMAN Board of Directors

Attest: _____
IPWMAN Secretary/Treasurer

Approved by the IPWMAN Interim Board of Directors on September 17, 2008.

SECTION XX: HEADINGS

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

SECTION XXI: SEVERABILITY

Should any clause, sentence, provision, paragraph, or other part of this Agreement be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Agreement. Each of the Parties declares that it would have entered into this Agreement irrespective of the fact that any one or more of this Agreement's clauses, sentences, provisions, paragraphs, or other parts have been declared invalid. Accordingly, it is the intention of the Parties that the remaining portions of this Agreement shall remain in full force and effect without regard to the clause(s), sentence(s), provision(s), paragraph(s), or other part(s) invalidated.

SECTION XXII: EFFECTIVE DATE

This Agreement shall be effective on the date of the acknowledgement letter sent by the Board of Directors.

SECTION XXIII: WAIVER

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

SECTION XXIV: EXECUTION OF COUNTERPARTS

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

SECTION XXV: PRIOR IPWMAN AGREEMENTS

To the extent that provisions of prior IPWMAN Agreements between signatories to this Agreement are inconsistent with this Agreement, all prior agreements for mutual aid and assistance between the Parties hereto are suspended.

SECTION XXVI: PROHIBITION ON THIRD PARTIES AND ASSIGNMENT OF RIGHTS/DUTIES

This Agreement is for the sole benefit of the Parties and no person or entity shall 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.

SECTION XV: NOTICE OF CLAIM OR SUIT

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

SECTION XVI: AMENDMENTS

Proposed amendments to this Agreement shall be submitted to the Board of Directors. Amendments shall be approved by majority vote of the Board of Directors.

SECTION XVII: ADDITIONAL PARTIES

Additional agencies may become Parties to this Agreement, provided that such agencies:

- (1) Approve and execute this Agreement.
- (2) Provide a fully executed copy of this Agreement to the Board of Directors.
- (3) Provide the name and title of an authorized representative to the Board of Directors.
- (4) Annually provide a list of mutual aid resources to its local accredited/certified Emergency Management Agency. If requested, the agency may need to assist its local accredited/certified Emergency Management Coordinator with data entry of its mutual aid resources into a web-based format (NIMS Source).

Upon submission of the items enumerated above to the Board of Directors and receipt of acknowledgement from the Board of Directors, the submitting agency shall be regarded as a Party to the Agreement.

SECTION XVIII: NOTICES

Notices and requests as provided herein shall be deemed given as of the date the notices are deposited, by First Class Mail, addressed to the Board of Directors who will notify each of the Parties' representatives.

SECTION XIX: INITIAL TERM OF AGREEMENT; RENEWAL; TERMINATION

The initial term of this Agreement shall be one (1) year from its effective date. Thereafter, this Agreement shall automatically renew for additional one-year terms commencing on the anniversary of the effective date of this Agreement. Any Party may withdraw from this Agreement at any time by giving written notification to the Board of Directors. The notice shall not be effective until ninety (90) days after the notice has been served upon the Board of Directors by First Class mail. A Party's withdrawal from this Agreement shall not affect that Party's liability or obligation incurred under this Agreement prior to the date of withdrawal. This Agreement shall continue in force and effect as to all other Parties until such time as a Party withdraws. Failure to adopt any amended agreement within ninety (90) days of said amended agreement will signify a Party's withdrawal from the Agreement.

SECTION XI: WORKERS' COMPENSATION

The Parties agree that Requesting Agency shall be responsible for payment of workers' compensation benefits owed to Requesting Agency's employees and that Responding Agency shall be responsible for payment of workers' compensation benefits owed to Responding Agency's employees.

SECTION XII: INSURANCE

Each Party shall bear the risk of liability for its agency and its agency's employees' acts and omissions and shall determine for itself what amount of insurance it should carry, if any. Each Party understands and agrees that any insurance coverage obtained shall in no way limit that Party's responsibility under Section XIII of this Agreement to indemnify and hold the other Parties to this Agreement harmless from such liability.

SECTION XIII: INDEMNIFICATION

Each Party hereto agrees to waive all claims against all other Parties hereto for any loss, damage, personal injury or death occurring in consequence of the performance of this Mutual Aid Agreement; provided, however, that such claim is not a result of gross negligence or willful misconduct by a Party hereto or its personnel.

Each Party requesting or providing aid pursuant to this Agreement hereby expressly agrees to hold harmless, indemnify and defend the Party rendering aid and its personnel from any and all claims, demands, liability, losses, suits in law or in equity which are made by a third party. This indemnity shall include attorney fees and costs that may arise from providing aid pursuant to this Agreement. Provided, however, that all employee benefits, wage and disability payments, pensions, worker's compensation claims, damage to or destruction of equipment and clothing, and medical expenses of the Party rendering aid shall be the sole and exclusive responsibility of the respective Party for its employees, provided, however, that such claims made by a third party are not the result of gross negligence or willful misconduct on the part of the Party rendering aid.

SECTION XIV: NON-LIABILITY FOR FAILURE TO RENDER AID

The rendering of assistance under the terms of this Agreement shall not be mandatory if local conditions of the Responding Agency prohibit response. It is the responsibility of the Responding Agency to immediately notify the Requesting Agency of the Responding Agency's inability to respond; however, failure to immediately notify the Requesting Agency of such inability to respond shall not constitute evidence of noncompliance with the terms of this section and no liability may be assigned.

No liability of any kind or nature shall be attributed to or be assumed, whether expressly or implied, by a party hereto, its duly authorized agents and personnel, for failure or refusal to render aid. Nor shall there be any liability of a party for withdrawal of aid once provided pursuant to the terms of this Agreement.

Responding Agency may recall its aid and assistance at any time at its sole discretion. Responding Agency shall make a good faith effort to give the Requesting Agency as much advance notice of the recall as is practical under the circumstances.

SECTION IX: DOCUMENTATION OF COST & REIMBURSEMENT OF COST

A. *PERSONNEL* – Responding Agency shall continue to pay its employees according to its then prevailing ordinances, rules, regulations, and collective bargaining agreements. At the conclusion of the period of aid and assistance, the Responding Agency shall document all direct and indirect payroll costs plus any taxes and employee benefits which are measured as a function of payroll (i.e.; FICA, unemployment, retirements, etc.).

B. *RESPONDING AGENCY'S TRAVELING EMPLOYEE NEEDS* – Responding Agency shall document the basic needs of Responding Agency's traveling employees, such as reasonable lodging and meal expenses of Responding Agency's personnel, including without limitation transportation expenses for travel to and from the stricken area during the period of aid and assistance.

C. *EQUIPMENT* – Responding Agency shall document the use of its equipment during the period of aid and assistance including without limitation all repairs to its equipment as determined necessary by its on-site supervisor(s) to maintain such equipment in safe and operational condition, fuels, miscellaneous supplies, and damages directly caused by provision of the aid and assistance.

D. *MATERIALS AND SUPPLIES* – Responding Agency shall document all materials and supplies furnished by it and used or damaged during the period of aid and assistance.

E. *REIMBURSEMENT OF COSTS* – Equipment, personnel, materials, supplies and/or services provided pursuant to this Agreement shall be at no charge to the Requesting Agency, unless the aid and assistance is requested for more than five (5) calendar days. If aid and assistance is requested from the State of Illinois to be activated as a State asset, the Responding Agency will be reimbursed for personnel, materials, supplies and equipment from the first day of the response to the event by the State of Illinois. Materials and supplies will be reimbursed at the cost of replacement of the commodity. Personnel will be reimbursed at Responding Agency rates and equipment will be reimbursed at an appropriate equipment rate based upon either pre-existing locally established rates, the Federal Emergency Management Agency Equipment Rate Schedule or that published by the Illinois Department of Transportation. In the event that there is no such appropriate equipment rate as described above, reimbursement shall be at the actual cost incurred by the Responding Agency.

SECTION X: RIGHTS AND PRIVILEGES OF RESPONDING AGENCY'S EMPLOYEES

Whenever Responding Agency's employees are rendering aid and assistance pursuant to this Agreement, such employees shall retain the same powers, duties, immunities, and privileges they would ordinarily possess if performing their duties within the geographical limits of Responding Agency.

SECTION IV: ANNUAL REVIEW

At a minimum, the Board of Directors shall meet annually at a meeting place designated by the Board of Directors to review and discuss this Agreement and, if applicable, to recommend amendments to this Agreement. The Board of Directors shall have the power and signing authority to carry out the purposes of this Agreement, including but not limited to the power to: adopt by-laws; execute agreements and documents approved by the Board of Directors; develop specific operating plans, procedures and protocol for requesting assistance; organize meetings; operate a website; disseminate information; create informational brochures; create subcommittees; maintain lists of the Parties; maintain equipment and supply inventory lists; and deal with Party issues.

SECTION V: PROCEDURES FOR REQUESTING ASSISTANCE

The Board of Directors will promulgate and regularly update procedures for requesting assistance through the Illinois Public Works Mutual Aid Network (IPWMAN) Operational Plan.

SECTION VI: RESPONDING AGENCY'S ASSESSMENT OF AVAILABILITY OF RESOURCES

The Board of Directors will promulgate and regularly update procedures for responding agency's assessment of availability of resources through IPWMAN Operational Plan.

SECTION VII: SUPERVISION AND CONTROL

A. DESIGNATION OF RESPONDING AGENCY'S SUPERVISORY PERSONNEL. Responding Agency shall designate a representative who shall serve as the person in charge of coordinating the initial work assigned to the Responding Agency's employees by the Requesting Agency. The Requesting Agency shall direct and coordinate the work being assigned to the Responding Agency(s) and the Requesting Agency's employees. All actions shall be consistent with and in accordance with the National Incident Management System (NIMS) and the IPWMAN Operational Plan.

B. RESPONSIBILITIES OF RESPONDING AGENCY'S SUPERVISORY PERSONNEL. The Board of Directors will promulgate and regularly update procedures for Responding Agency's supervisory personnel through the IPWMAN Operational Plan.

SECTION VIII: LENGTH OF TIME FOR AID AND ASSISTANCE; RENEWABILITY; RECALL

The Board of Directors will promulgate and regularly update procedures for length of time for aid and assistance; renewability; recall through the Illinois Public Works Mutual Aid Network (IPWMAN) Operational Plan.

It is presumed that a Responding Agency's aid and assistance shall be given for an initial minimum period of twelve (12) hours. Thereafter, assistance shall be extended as the Responding Agency and Requesting Agency shall agree. The twelve (12) hour period shall start when the aid and assistance departs from Responding Agency's location with the intent of going to Requesting Agency's location. The aid and assistance shall end when it returns to Responding Agency's location with the understanding between the Responding Agency and Requesting Agency that provision of aid and assistance is complete.

Assistance Agreement, but must be coordinated through the appropriate local accredited/certified Emergency Management Agency coordinator.

G. "IPWMAN" is the acronym for the Illinois Public Works Mutual Aid Network.

H. "LOCAL EMERGENCY" is defined as an urgent need requiring immediate action or attention beyond normal capabilities, procedures and scope for aid and assistance by an agency.

I. "MUTUAL AID RESOURCE LIST" means the list of the equipment, personnel and other resources that each Party has available for the provision of aid and assistance to other Parties. This list shall be periodically updated in accordance with the Operational Plan.

J. "NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS)" a Presidential directive that 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.

K. "PARTY" means an agency which has adopted and executed this Agreement.

L. "PERIOD OF ASSISTANCE" means a specified period of time when a Responding Agency assists a Requesting Agency. The period commences when personnel, equipment, or supplies depart from a Responding Agency's facility and ends when the resources return to their facility (portal to portal). All protections identified in the Agreement apply during this period. The specified Period of Assistance may occur during response to or recovery from an emergency, as previously defined.

M. "RESPONDING AGENCY" means the Party or Agency which has received a request to furnish aid and assistance from another Party and has agreed to provide the same.

N. "REQUESTING AGENCY" means the Party or Agency requesting and receiving aid and assistance from a Responding Agency.

SECTION III: RESPONSIBILITY OF PARTIES

A. *PROVISION OF AID.* Each Party recognizes that it may be requested to provide aid and assistance at a time when it is necessary to provide similar aid and assistance to the Party's own constituents. This Agreement shall not be construed to impose any unconditional obligation on any Party to provide aid and assistance. A Party may choose not to render aid and assistance at any time, for any reason.

B. *RECRUITMENT.* The Parties hereby encourage each other to enlist other agencies to adopt and execute this Agreement.

C. *AGREEMENT FOR BENEFIT OF PARTIES.* All functions and activities performed under this Agreement are for the benefit of the Parties to this Agreement. Accordingly, this Agreement shall not be construed to be for the benefit of any third parties and no third parties shall have any right or cause of action against the Parties to this Agreement.

D. *IMMUNITIES.* All immunities provided by law to the Parties shall be fully applicable to the Parties providing or receiving aid and assistance pursuant to this Agreement, including, but not limited to, the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101, et seq.

E. *MEMBERSHIP.* To be a member in good standing, a Party shall be responsible for dues and other obligations as specified in the IPWMAN By-Laws and Operational Plan.