

FIRST AMENDED AND RESTATED MICHIGAN BEST PRACTICES CONTRACT

This First Amended and Restated Michigan Best Practices Contract (hereinafter "Contract") is made effective July 1, 2006, by and between the undersigned Constituent Board Members of the Michigan Damage Prevention Board (MDPB) representing the infrastructure construction contractors and the undersigned Underground Facility Owners.

RECITALS

1. Michigan Infrastructure and Transportation Association, Inc. (MITA) is an association whose membership consists primarily of infrastructure construction contractors in the State of Michigan and MITA represents the infrastructure construction contractors in its capacity as a Constituent Board Member of MDPB.
2. The Underground Facility Owners, or their members, own, operate or lease Underground Facilities within the State of Michigan.
3. The Constituent Members of the MDPB have agreed to pursue a common goal of reducing instances of damage to Underground Facilities and avoiding the disruption of infrastructure construction activities inherent in incidents of damage to Underground Facilities.
4. MITA and Underground Facility Owners desire to achieve their mutual goal through the establishment, adoption and agreement to be contractually bound to comply with procedures, requirements, terms and conditions governing the identification and locating of Underground Facilities in advance of construction activities.
5. On or about August 1, 2003, MITA's predecessor in interest, Associated Underground Contractors, Inc. and the then Underground Facility Owners entered into agreement known as the Michigan Best Practices Contract.
6. Thereafter, the Michigan Best Practices Contract was revised, by written addendums, to reflect changes to that agreement and in the parties to that agreement. In order to accurately reflect the current agreement, the parties thereto and additional desired changes to that August 1, 2003 agreement, the undersigned unanimously have agreed to terminate the agreement and all amendments thereto and simultaneously enter into this Amended and Restated Michigan Best Practices Contract (Contract).
7. This Contract supersedes and replaces the Michigan Best Practices Contract dated on or about August 1, 2003, and all written amendments thereto.

NOW, THEREFORE, in consideration of the representations, warranties, mutual promises, and undertakings set forth in this Contract, and in reliance thereon, and for

other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, MITA and Underground Facility Owners AGREE AS FOLLOWS:

ARTICLE I DEFINITIONS

- A. MITA – Michigan Infrastructure and Transportation Association, Inc.
- B. MITA Best Practices Members – Any and all members of MITA which have elected to be bound by the terms and conditions of this Contract during any calendar year.
- C. Legal Holidays – Shall be those days observed by the Miss Dig offices as a public holiday in any calendar year.
- D. Michigan Best Practices – The practices and procedures promulgated and adopted by the MDPB for the identification and protection of underground facilities, as such may be amended, modified or supplemented from time to time in accordance with the procedures set forth in this Contract. The Michigan Best Practices in effect as of the date of this Contract are attached hereto as Exhibit A.
- E. MDPB - Michigan Damage Prevention Board, a nonprofit corporation established to identify, develop and implement Michigan Best Practices for the identification and protection of underground facilities.
- F. Party/Parties - MITA, MITA Best Practices Members, and the Underground Facility Owners, individually or collectively.
- G. Underground Facility Owners – The undersigned utility owners or other utility owners who agree in writing to be bound by the terms and conditions of this Contract.
- H. Underground Facilities - Any pipe, gas, electric, heat, water, oil, sewer, telephone, radio, transportation, communication or other line or device located underground and owned, operated or leased by an Underground Facility Owner.

ARTICLE II BINDING NATURE OF CONTRACT

It is mutually understood that each and every provision of this Contract, including the foregoing Recitals, is contractual in nature and shall be binding upon MITA, the Underground Facility Owners, the membership of any undersigned association, and MITA Best Practices Members during the term of this Contract and any renewal hereof.

ARTICLE III
PURPOSE, SCOPE AND TERM

A. Purpose

This Contract is intended to fulfill the following purposes:

1. To implement the promulgation, adoption, adherence to, and enforcement of, Michigan Best Practices standards, requirements, and procedures for the identification, protection, and locating of Underground Facilities in advance of construction activities.
2. To ensure that the undersigned Underground Facility Owners and MITA Best Practices Members maintain and be bound by the promulgated and adopted Michigan Best Practices.

B. Scope

1. This Contract shall govern and apply to any and all construction activities subject to the requirements of P.A. 53 of 1974, as amended.
2. MITA shall annually compile and furnish to MISS DIG, who in turn shall furnish to the Underground Facility Owners, and other stakeholders, an up-to-date roster of all MITA Best Practices Members (as it may be amended or updated from time to time in accordance with this Article III(B)(2), the "Best Practices Member Roster"). The Best Practices Member Roster shall be published and furnished to MISS DIG by MITA and by MISS DIG to each of the Underground Facility Owners by March 15 of each year this Contract remains effective. MITA may supplement or amend the Best Practices Member Roster from time to time during any calendar year by furnishing supplements to MISS DIG by facsimile or email, who in turn shall furnish the supplement or amended Best Practices Member Roster to the Underground Facility Owners via facsimile or email, and such supplements shall be effective and binding upon the Parties ten (10) calendar days, excluding Saturdays, Sundays and Legal Holidays, after the facsimile or email transmission. At any time during the term of this Contract, MITA may, but shall not be required to, elect to furnish its annual or any supplement or amended Best Practices Member Roster directly to the Underground Facility Owners without routing such roster(s) through MISS DIG. The Best Practices Member Roster shall be effective from the fifteenth day of March, and, in the case of supplements, from the effective date of the supplement, until the fourteenth day of March of the following calendar year. If the MITA fails to timely provide an updated Best Practices Member Roster, the then current Best Practices Member Roster shall be deemed to remain in full force and effect until an updated Best Practice Member Roster is provided.

C. Term

This Contract shall commence upon the effective date written above and shall continue until terminated pursuant to the Termination provisions of Article VI.

ARTICLE IV
MICHIGAN BEST PRACTICES

A. The current version of the Michigan Best Practices is attached hereto as Exhibit A. Such Michigan Best Practices shall be a part of and incorporated into this Contract by this reference

B. The Michigan Best Practices shall be binding upon and enforceable against all Parties to this Contract. The Michigan Best Practices may be amended, supplemented or modified from time to time by unanimous mutual agreement of the MITA and all Underground Facility Owners. The effective date of any such amendment, supplement or modification to the Michigan Best Practices shall be the forty-fifth calendar day following the date of delivery of such amendment, supplement or modification by the MDPB to the Underground Facility Owners and the MITA in accordance with Article IV.C below. In the case of any conflict between the most current version or edition of the Michigan Best Practices and any earlier version or edition, the most current version or edition shall take precedence. Upon any such amendment, supplement or modification to the Michigan Best Practices, the most current version or edition of the Michigan Best Practices shall be a part of and incorporated into this Contract by this reference.

C. Upon any such amendment, supplement or modification to the Michigan Best Practices, the MDPB shall promptly provide notice to the Underground Facility Owners and the MITA (and the MITA shall be responsible for notifying the MITA Best Practices Members of such amendment, supplement or modification).

ARTICLE V
PROPRIETARY PRODUCT AND RESTRICTIONS ON USE

So long as this Contract is in effect, the Parties hereby agree and acknowledge that the “Michigan Best Practices” described in this Contract are unique and distinct and that, as such, are the exclusive and proprietary work product and property of the Parties hereto. The Parties further agree that they will not, either individually or with any of the other Parties to this Contract, enter into any agreement or arrangement with any third party who is not a Constituent Member of MDPB to use, offer for use, furnish or otherwise provide or disseminate the “Michigan Best Practices” or any variation thereof without the prior written consent of all the Parties hereto. The Parties further agree that if any Party breaches or threatens to breach the limitations on use set forth in this Contract, all other Parties hereto will suffer irreparable harm and, accordingly, in addition to any other remedies available to the non-breaching Parties hereto for such

breach or threatened breach, including the recovery of damages, any non-breaching Party shall be entitled to seek an injunction restraining the breaching Party from any unauthorized use or dissemination of the Michigan Best Practices. In the event of litigation relating to this Contract, if a court of competent jurisdiction determines that a Party has breached this Contract, then such Party shall be liable and pay to the non-breaching Party or Parties the reasonable actual legal fees and other expenses that such non-breaching Party or Parties has incurred in connection with such litigation, including any appeal therefrom.

ARTICLE VI DEFAULT & TERMINATION

A. Default. Any one of the following shall constitute a default and breach of this Contract by a Party:

1. A Party fails to perform any of its obligations set forth in this Contract, which default is not cured within thirty (30) days after receipt of written notice;

2. A Party, following reasonable notice of the delinquency (which shall not be less than thirty (30) days), fails to pay any fee or dues established by the Michigan Damage Prevention Board.

A Party's failure to comply with the Michigan Best Practices shall not be deemed to be a default or breach of this Contract and shall not be subject to the thirty (30) day notice to cure provisions applicable to a default or breach of this Contract.

B. Termination. This Contract may be terminated by mutual agreement of a majority of the undersigned Constituent Board Members of the MDPB.

ARTICLE VII WITHDRAWAL

Any Party to this Contract may, upon thirty (30) days written notice delivered to the MDPB, withdraw from this Contract. Withdrawal from this Contract shall relieve the Party withdrawing from further compliance with the Michigan Best Practices on a prospective basis only. The withdrawing Party shall forfeit any rights it may have or obligations it may be owed by participating Parties for compliance with the Michigan Best Practices from the effective date of termination.

ARTICLE VIII REMEDIES

In the event of a Party's default or breach under Article VI of this Contract, the non-breaching Party shall be entitled to seek any and all remedies available at law or in equity, including money damages and equitable relief. Furthermore, in the event a Party fails to comply with the Michigan Best Practices, a Party which incurs actual

damages as a result of such non-compliance shall be entitled to seek to recover from the non-complying party the direct damages resulting from such non-compliance. A Party shall have set-off rights against another Party relative to any claims by the first Party which have been reduced to a final and unappealable judgment against the second Party. The remedies for the recovery of direct and actual damages resulting from a Party's non-compliance with the Michigan Best Practices and the right of set-off are the only contractual remedies which a Party shall be entitled to recover as a result of another Party's non-compliance with the Michigan Best Practices. This Contract does not permit the recovery of different or additional contractual remedies or damages, nor does it limit or preclude the recovery of any such different or additional remedies or damages which may otherwise be available to a Party independently of this Contract, arising out of another Party's non-compliance with the Michigan Best Practices.

ARTICLE IX DISPUTE RESOLUTION

Each of the undersigned Parties, or their respective individual members, shall be entitled to pursue the enforcement of, and remedies provided in, this Contract.

ARTICLE X MISCELLANEOUS

A. Entire Agreement.

This Contract constitutes the entire agreement between the Underground Facility Owners and MITA and supersedes any and all prior oral or written agreements or understandings, including but not limited to the original Michigan Best Practices Contract dated August 1, 2003, and all amendments thereto.. Notwithstanding the foregoing, this Contract, and the Michigan Best Practices, shall be deemed to supplement, but not supersede, any and all other Michigan laws, statutes, rules or regulations which address the subject matter of this Contract, and the Michigan Best Practices (collectively, the "Applicable Michigan Laws"). To the extent not addressed by Applicable Michigan Laws or, in the event of a conflict between this Contract and/or the Michigan Best Practices and the Applicable Michigan Laws, to the extent permitted by law, the terms of this Contract and the Michigan Best Practices shall govern and control. In all other matters, all Applicable Michigan Laws shall continue to apply to the subject matter thereof.

B. Modification.

This Contract may be modified or changed only by a written addendum signed by all of the Underground Facility Owners and MITA.

C. Successors and Assigns.

The provisions of this Contract are binding on and inure to the benefit of the Parties and their successors and permitted assigns. A Party may not assign its right or

responsibilities under this Contract without the prior written consent of the other Parties, which consent shall not be unreasonably withheld.

D. Subcontractors.

A Party may perform its obligations under this Contract by subcontractors. However, each Party shall ensure that if any of its obligations under this Contract are performed by a subcontractor, the subcontractor be bound by the terms of this Contract. Any breach of the terms of this Contract, or failure to comply with the Michigan Best Practices, by a Party's subcontractor, agent or representative, shall constitute a breach or failure to comply by the Party and that Party shall remain responsible for all consequences of such breach or failure to comply by such subcontractor(s).

E. Severability.

Should any provision of this Contract be deemed or declared invalid, illegal or unenforceable under Michigan law, such provision shall be construed in a manner so as to be valid, legal and enforceable. If such construction is not possible, then such provision shall be stricken from this Contract. In either event, all other terms and provisions of this Contract shall remain in full force and effect.

F. Notices.

Any notice, request, demand, approval, consent or other communication that a Party may be required or permitted to give another Party under this Contract must be in writing and must be served personally, by prepaid first class mail or certified mail to the address of the other Party as set forth in this Contract or at such other address as the Party has designated for such purpose by notice in accordance with this Section, or by telephonic facsimile to the number set forth in this Contract or a number the Party has designated for such purpose by notice in accordance with this Section.

G. Applicable Law.

This Contract shall be governed by and construed in accordance with the laws of the State of Michigan.

H. Waivers.

No waiver by a Party of any breach, default or violation of any term, warranty, representation, agreement, condition or provision of this Contract will constitute a waiver of any subsequent breach, default or violation of the same or other term, warranty, representation, agreement, condition or provision of this Contract. A waiver shall be narrowly construed. The mere delay in enforcement of a right shall not be a waiver of a default. No waiver shall be effective unless in a writing signed by the Party to be charged.

I. Relationship.

Nothing contained in this Contract is intended nor is this Contract to be construed so as to constitute any of the Parties as a partner, agent or joint venturer of another Party to this Contract. None of the Parties hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of any other Party or to bind any other Party to any contract, agreement or undertaking with any third party.

J. Third Party Beneficiaries.

Except for MITA Best Practices Members appearing upon the Best Practices Member Roster, this Contract confers no benefits, rights or remedies on any individual, entity, or other person who is not a Party to this Contract.

K. Warranty of Authority.

Each of the undersigned Parties and the individuals executing this Contract on behalf of their respective companies, associations or memberships expressly represent and warrant to the other Parties that he or she is duly authorized to execute this Contract, and that all necessary and appropriate approvals, resolutions and authorizations have been duly completed to bind their respective companies, associations or members to the terms hereof. MITA shall provide written documentation to the other parties to this Contract that it has the authority to bind the MITA Best Practices Members as set forth in this Contract, e.g., written authorization executed by each MITA Best Practices Member, a resolution adopted by the MITA membership, or a provision in the constitution approved by the MITA membership. An MITA Best Practices Member who ceases to be an MITA member after the effective date of this Contract shall continue to be bound by the provisions of this Contract unless the member provides written notice of withdrawal from the Contract or MITA provides written notice of termination of the member's participation as a Best Practices Member, which notice shall be effective thirty (30) days after the date the notice is served on the Parties to this Contract.

L. Duplicate Counterparts.

This Contract may be executed in duplicate counterparts, each of which shall be deemed a valid original.

M. Statute of Limitations.

The statute of limitations for an action to be brought against a Party under the terms of this Contract shall be two (2) years from the date of discovery of the event which gives rise to such action.

N. Force Majeure.

A Party shall not be liable for failure to perform its obligations under this Contract, if such results from: (1) extraordinary natural forces such as severe weather, floods, earthquakes and fires; or (2) unusual occurrences beyond the reasonable control of the Party such as civil disturbances, riots, war, acts of terrorism, work stoppage, governmental regulations or declarations and utility system emergencies (including mechanical, electronic or communications failure not caused by the Party's financial condition or negligence). A Party claiming inability to perform under this subsection shall provide written notice to the Secretary of the MDPB, including a detailed description of the event, and the Secretary of the MDPB shall distribute the notice to all other parties to this Contract. Performance shall be excused for no longer than reasonably necessary under the circumstances and, upon termination or expiration of the force majeure event, the party suffering the force majeure event shall provide notice of the date and time of the termination of the force majeure event or circumstances to the Secretary of the MDPB, who, in turn, will distribute the notice to all other parties to this contract.

Michigan Infrastructure and
Transportation Association, Inc.

By: _____

By: _____
Robert A. Patzer

Its: _____

Its: Executive Vice President

Michigan Consolidated Gas
Company, Inc.

The Detroit Edison Company

By: _____

By: _____

Its: _____

Its: _____

Associated Petroleum Industries
of Michigan

SEMCO Energy, Inc.

By: _____

By: _____

Its: _____

Its: _____

Consumers Energy

Michigan Bell Telephone Company,
d/b/a AT&T Michigan

By: _____

By: _____

Its: Senior Vice President-Gas
Operations

Its: _____

By: _____

Michigan Electric Cooperative
Association

Its: Senior Vice President-Electric
Transmission and Distribution

Michigan Electric and Gas Association

By: _____

Its: _____

